STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

AT&T Communications of Illinois, Inc.,	**)**	
TCG Illinois and TCG Chicago	**)**	
	)	
Petition for Arbitration of Interconnection Rates,	**)**	
Terms and Conditions and Related Arrangements	**)**	**Docket 03-0239**
With Illinois Bell Telephone Company d/b/a/	**)**	
SBC Illinois Pursuant to Section 252(b)	**)**	
of the Telecommunications Act of 1996	**)**	

REPLY BRIEF OF AT&T COMMUNICATIONS OF ILLINOIS, INC., TCG ILLINOIS AND TCG CHICAGO

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I. INTRODUCTION

This is the Reply Brief of petitioners AT&T Communications of Illinois, Inc., TCG Illinois and TCG Chicago in this arbitration. As in AT&T's Initial Brief, the petitioners will be referred to collectively as "AT&T", and the respondent Illinois Bell Telephone will generally be referred to as "SBC" or "SBC Illinois".[1] Consistent with the organization of AT&T's Initial Brief, this Reply Brief is organized by major issue area and article of the Interconnection Agreement ("ICA") that is the subject of this arbitration, specifically: General Terms and Conditions (Article 1), Interconnection (Articles 3 and 4), Unbundled Network Elements ("UNE") (Article 9), Collocation (Article 12), Local Number Portability ("LNP") (Article 13), Poles, Ducts and Right-of Way (Article 16), Intercarrier Compensation (Article 21), Comprehensive Billing (Article 27), OSS (Article 33), and Pricing (Pricing Schedule). Within each major issue category, the unresolved issues are presented and discussed in accordance with the numbering sequence reflected in the Arbitration Petition.

[1]During the course of negotiations between the parties towards a new Interconnection Agreement ("ICA"), Illinois Bell Telephone Company changed its assumed name from Ameritech Illinois to SBC Illinois. As a result, respondent will sometimes be referred to in this Brief as "Ameritech", "Ameritech Illinois" or "SBC Ameritech."

II. GENERAL TERMS AND CONDITIONS ("GTC") ISSUES (ICA ARTICLE 1)

GTC Issue 1: What change of law language is appropriate?

A. Should the change of law provision apply at the effective date of the agreement or from February 19, 2003?

SBC Issue 1: Should the parties' interconnection agreement, when it is approved by this Commission (the "Agreement Approval Date") reflect (i) order(s) and regulations, if any, that the FCC promulgates before the Agreement Approval Date in its Triennial Review proceeding, along with the decision of the United States Court of Appeals for the D.C. Circuit in United States Telecom Association, et al. v. FCC, No. 00-1012 ("USTA"); and (ii) the decision, if any, that the United States District Court for the Northern District of Illinois renders before the Agreement Approval Date in Case No. 02-C-6002, SBC Illinois' pending challenge to this Commission's 801 Order (the "801 Case")?

AT&T stands by its position and arguments on GTC Issue 1A and SBC Issue 1 as set forth at pages 5-9 of its Initial Brief, including its proposal on page 9. AT&T disagrees with SBC's statement that "The parties' negotiations were based on the law as it was prior to February 19, 2003" (SBC Init. Br., p. 5), because the parties continued to negotiate the terms of the ICA through the date the Arbitration Petition was filed (April 11, 2003) and thereafter. In fact, the parties continue to negotiate today. There is no basis for setting February 19, 2003, as the "baseline" date for application of the ICA's "change of law" provisions, as SBC proposes. That date was chosen by SBC solely because it is the day before issuance of the FCC's press release describing its (as yet unreleased) 2003 Triennial Review Order. The parties continued to negotiate on a wide variety of provisions of the entire ICA after that date, however, as AT&T explained in its Initial Brief (p. 7), the baseline date should be no earlier than June 18, 2003, the date the record in this case was marked "Heard and Taken." Indeed, in the absence of additional legal developments (other than those discussed in the next paragraph), the Commission might well direct that a later date than June 18 – such as the date the order in this case is issued – be specified in the ICA as the baseline date for the change of law provision. (Id.)

AT&T does agree, however, that the parties did not take any of the following developments into account in their negotiations: (1) the FCC's 2003 Triennial Review Order (which is not yet issued); (2) the U.S. Court of Appeals decision in United States Telecom Ass'n v. FCC (because although the decision was rendered in May 2002, issuance of the Court's mandate was stayed); and (3) the decision of the federal district court in SBC Illinois' appeal of the Commission's order in Docket 01-0614 regarding implementation of 220 ILCS 5/13-801 (which appeal is still in progress). Therefore, AT&T is agreeable to language in the ICA to expressly recognize that neither party is precluded from asserting that any of these three orders or decisions is a "change of law" solely by the fact that the decision or order is issued before the baseline date (or, indeed, before the ICA's effective date). Had SBC or Staff identified any other recent developments that arguably could qualify as "changes in law", AT&T would be willing to give such developments similar express recognition as well, but they have not done so.[2]

AT&T's approach is more reasonable than either SBC's or Staff's proposals, because AT&T's approach gives express recognition to those known developments that the parties agree were not taken into account in negotiating the ICA that is before the Commission, without giving a party the opportunity, as an afterthought, to assert that some other heretofore unmentioned legal development which occurred subsequent to February 19, 2003, was not taken into account in developing the ICA. Such a provision would simply give parties an undeserved opportunity to cure their own negotiating errors, or a second bite at raising issues they had decided to forego in the course of the negotiations that have continued well beyond February 19.

[2]SBC (and Staff) argue that changes in law can occur too late in the process to be taken into account in negotiating and arbitrating an interconnection agreement (see SBC Init. Br., p. 5; Staff Init. Br., pp. 5-6), but SBC (and Staff) simply **have not identified** any such claimed changes in law other than the three developments recognized by AT&T.

Moving to the issue raised by SBC of whether the Triennial Review Order is a "change in law", SBC's suggestion that AT&T might contend the Triennial Review Order (which, again, has yet to be seen) is not a "change in law" for purposes of the ICA grossly oversimplifies the issues likely to be presented when the Triennial Review Order is finally released. (SBC Init. Br., p. 4) The Triennial Review Order is expected to address numerous topics, and its determinations on some of those topics may constitute "changes in law" while others may not. It would then also have to be determined whether in fact provisions of the ICA are contrary to or inconsistent with those provisions of the Triennial Review Order that are determined to constitute a "change in law." Staff has now clarified that it agrees with AT&T on this point:

> With respect to Mr. West's reply to Dr. Zolnierek, Staff clarifies that it is not Staff's position, as AT&T implies, that the rules that result from the Triennial Review process are automatically considered changes in applicable law. *See* AT&T Ex. 1.1 at 2. Neither Staff nor any party can know this because the FCC has not yet issued new rules.[3] (Staff Init. Br., p. 7)

Accordingly, GTC Issue 1A and SBC Issue 1 should be resolved in the manner proposed by AT&T above and in our Initial Brief.

B. Should either party be obligated to renegotiate a change in law that is not applicable and materially affects this agreement?

To put it simply, SBC's arguments on GTC Issue 1B are all premised on the assumption that if SBC attempts to invoke the "change of law" provisions of the ICA, AT&T will negotiate in bad faith. That is not a reasonable premise under any circumstances, and certain not in the context of a Section 252 interconnection agreement, which the Telecommunications Act requires carriers to negotiate in good faith. At the same time, SBC's position that the change of law

[3]Similarly, Staff recognizes that "actions taken or to be taken by both the United States Court of Appeals for the DF.C. Circuit and the FCC with respect to federal UNE rules . . . *may, in fact*, result in a change in applicable law under the interconnection agreement." (Staff Init. Br., p. 5; emphasis added)

provisions do not need to say that a claimed change of law has to have a material impact on this Agreement (because, SBC says, no one would bother to attempt to negotiate an ICA amendment to address an immaterial impact (see SBC Init. Br., pp. 8-9)) is inconsistent with the most fundamental concepts of draftsmanship. It is impossible to see how SBC could object to this language. As to SBC's complaint that AT&T has failed to provide a definition of the term "material" (Id., p. 8), SBC should well know that parties drafting contracts use the term "material" all the time without further definition. It is exactly the "elasticity" of that term that SBC points out (Id., p. 8, note 3) that makes its use ideal, providing a flexible standard that can accommodate a wide range of unforeseeable future developments.

The greater expedition that SBC claims its proposed language will produce in addressing claimed changes in law is in fact illusory, because if one party asserts a development constitutes a change in law that warrants amendment of the ICA, and the other party disagrees, the negotiations are unlikely to proceed to the actual terms of an amendment until the threshold question is resolved. (It should be obvious, by the way, that the provisions AT&T is advocating could just as well turn out to protect SBC as AT&T, depending on which party is asserting that a change in law has occurred and whether the other party agrees or disagrees.) In fact, AT&T's proposed language for Section 1.3.0 of the ICA actually provides for this threshold question (assuming it arises at all) to be resolved more expeditiously than would SBC's language: Under AT&T's language, the party asserting that an ICA amendment is needed due to a change in law can initiate dispute resolution on that question "if the non-requesting Party refuses to engage in such renegotiation on the ground that there has been no Change in Applicable Law sufficient to require renegotiation under this Section". Under SBC's language, in contrast, the non-requesting party would have to wait 90 days before initiating dispute resolution on this question.

The fundamental issue here is that circumstances may arise in which one party asserts that an ICA amendment is needed because a change of law has occurred, and the other party disagrees (either because the second party does not believe the cited development constitutes a change in applicable law, or because the second party does not believe an ICA amendment is necessary in light of the cited development). SBC's proposed language seems to assume that such disagreements will never occur and that if one party asserts an ICA amendment is needed because a change of law has occurred, the parties will always be willing and able to move directly to negotiation of an appropriate amendment. However, disputes over whether a change in applicable law has occurred or whether an ICA amendment is needed can occur, so it is only prudent that the ICA's change in law provisions include procedures for dealing with such disputes. AT&T's proposed language for Sections 1.30 and 1.31 does so, while SBC's language does not. Accordingly, the Commission should resolve GTC Issue 1B by adopting AT&T's proposed language.

D.[4] Should there be a final and nonreviewable standard for dispute resolution related to change in law?

SBC (and Staff) object to the following provision of AT&T's proposed language for Section 1.3.1:

> In addition, either Party may petition the ICC for a determination that, during any portion of the period during which a Change in Applicable Law subject to this Section 13 is still subject to review and has not yet become final and nonreviewable, the parties should defer any renegotiation or dispute resolution pursuant to Section 1.9.1.2 below.

As SBC correctly recognizes (SBC Init. Br., p. 15), AT&T's language <u>does not</u> give a party a unilateral right to refuse to negotiate an ICA amendment while a claimed change in applicable

[4]GTC Issue 1C has been settled.

law event is subject to further judicial review. It only gives a party the right to petition the Commission for a determination that renegotiation of an amendment should not go forward pending judicial review. The party would have to determine if such a petition were worthwhile (i.e, whether it was worth the expenditure of resources in light of the importance of the change in law event and the Commission's likely ruling on the petition), and if it did file such a petition, the Commission would have to grant it, in order for negotiation of an ICA amendment to be deferred. In all other events, a party will have to respond substantively to the other party's request for negotiation of an ICA amendment due to a claimed change in applicable law event – that is, it will have to follow the "legally binding" standard advocated by SBC and Staff. AT&T's proposed language **does not** give a party carte blanche to simply refuse to negotiate an ICA amendment in response to a change in applicable law event, such as an FCC or Commission order or a court decision, solely on the grounds that the order or decision is under, or still subject to, further appeal.[5]

SBC is correct that some FCC orders were under judicial review for a long time. (SBC Init. Br., p. 14, note 9) It is also true that some FCC orders and rules have been reversed by the courts. AT&T's principal concern on this issue, as articulated in the section of our Initial Brief (pp. 9-10), is that a party not be required to expend resources negotiating and implementing an ICA amendment (and potentially expending additional resources to change systems and processes to conform to the amendment) while an order, decision or statute constituting the claimed change in law is still subject to judicial review.[6] Again, however, under AT&T's

[5]Further, the provision proposed by AT&T is just as likely to operate to protect SBC's interests as it is to protect AT&T's interests over the life of this ICA.

[6]The discussion on GTC Issue 1D at the bottom of page 9 of AT&T's Initial Brief erroneously referred to AT&T's proposed language for Section 1.3.2; it should have referred to AT&T's proposed language for Section 1.3.1 of the ICA.

proposed language, this would be a determination that could only be made by the Commission in response to a petition; it could not be unilaterally made by a party.

Staff argues that the Commission rejected language such as AT&T proposes in the Order on Rehearing in the *Global NAPS* arbitration, Docket 02-0253. (Staff Init. Br., p. 11) However, as Staff has recognized elsewhere in its Brief (for example, on the very next issue, see Staff Init. Br., pp. 17-19), Commission orders are not "precedent", and it is particularly inappropriate to treat prior orders as "precedent" in the ICA arbitration context, as it would deprive the Commission of the opportunity to apply its expertise to the evolving circumstances presented by new arbitrations. The record and arguments in this case show that the ICA language proposed by AT&T for Section 1.3.1, quoted above, provides an appropriate procedural safeguard and should be adopted.

GTC Issue 2:

A. AT&T Issue: Is it appropriate to cap the damages paid to a party at the price of services not rendered?

SBC Illinois Issue: Is it appropriate to replace a commercially reasonable capped indemnification exposure with non-capped damages when such unlimited damages were not factored into SBC's cost studies underlying the UNEs and services provided under this agreement?

C.[7] Should SBC's liability to AT&T exceed commercially reasonable damages available under this agreement by also including remedies beyond those allowed by applicable law by allowing more than one full recovery on a claim?

Although SBC originally proposed other language, SBC's position now is that the Commission should resolve this issue by adopting contract language that was adopted in Docket 01-0623 for the SBC – McLeodUSA Telecommunications Services, Inc. ("McLeodUSA")

[7]GTC Issue 2B has been settled.

arbitration. (SBC Init. Br., pp. 19-22) Staff's position is that the Commission should **not** adopt the McLeodUSA language for this issue. (SBC Init. Br., pp. 17-19) AT&T agrees with Staff's reasoning, and continues to advocate that its proposed language for Section 1.7.1.2 of the ICA be adopted.[8]

Since Article 32 of the ICA would incorporate SBC's current Commission-approved performance remedy plan (i.e., the remedy plan approved in Docket 01-0662, which, as we noted in our Initial Brief, is likely also to be submitted to the FCC in connection with SBC Illinois' Section 271 application), and SBC appears to agree that performance remedies under Article 32 of the ICA would be an exception to the liability cap, the only other two potential exceptions to the liability cap provided for by AT&T's language that SBC has not accepted are, practically speaking (1) payments or credits that might be due under the carrier to carrier wholesale service quality rules "and remedies to ensure enforcement of the rules" that the Commission is mandated by 220 ILCS 5/13-712(g) to adopt (promulgation of such rules is under development in Docket 01-0539 (proposed Code Part 731) and (2) "obligations otherwise expressly provided in specific appendices or attachments." As discussed at pages 12-14 of AT&T's Initial Brief, it is hard to see how SBC could object to either of these exceptions to the liability "cap." AT&T agrees with Staff that payments or credits required under performance remedy plans or wholesale service quality plans adopted by the Commission (such as those adopted or to be adopted in Dockets 01-0662 and 01-0539) should be exceptions to the ICA's liability "cap." (Staff Init. Br., pp. 14-16) To provide otherwise would be to frustrate the public interest and public policy reflected in the

[8]AT&T notes that the language adopted by the Commission in the McLeodUSA arbitration, as quoted at page 19 of SBC's Initial Brief, is confusing and potentially problematic. In particular, the phrase "Notwithstanding the foregoing" that starts the second sentence (which limits liability to the amount that was paid or would have been paid for the service) of that provision arguably overrides the exceptions to the "cap" that are stated in the first sentence.

Commission's adoption of those plans (and, in the case of Code Part 731, the intent of the General Assembly).

The language proposed by Staff at page 16 of its Initial Brief for Section 1.7.1.2 of the ICA appears to be identical to the language proposed by AT&T as set forth on the GTC Issues matrix in SBC's and AT&T's "Joint Submission of Disputed Language", with one exception: in the tenth line, Staff's language does not include the word "inadvertent" before "omission". SBC and AT&T agreed to add the word "inadvertent" here in their settlement of GTC Issue 2B. (See Second Joint Notice of Settled Issues.)

GTC Issue 2C, and AT&T's proposed language for Section 1.7.2.1 of the ICA, were not expressly addressed by SBC in it's Initial Brief. Staff recommends adoption of AT&T's proposed language for Section 1.7.2.1. (Staff Init. Br., pp. 20-23) Further, the disputed language proposed by AT&T for Section 1.7.2.1 is fully consistent with its proposed language for Section 1.7.1.2, in that it simply provides that payments or credits due under the financial incentive or remedy provisions of any service quality plan required by the FCC or this Commission, or due in connection with failure to provide adequate carrier-to-carrier service quality or to meet the service quality standards of Article 32 of the ICA, shall not be limited by the limitation on indirect, incidental, consequential, reliance or special damages otherwise established by Section 1.7.2.1. Accordingly, the Commission should adopt AT&T's proposed language for Section 1.7.2.1 (as well as for Section 1.7.1.2).

GTC Issue 4:

> **AT&T Issue: Is AT&T entitled to purchase out of the tariff and/or incorporate individual rates, terms and/or conditions that are more favorable in tariff filings in to the parties' ICA through the amendment process.**
>
> **SBC Illinois Issue: When AT&T orders out of a tariff, should AT&T be bound by the terms and conditions of the tariff, or may it pick and choose terms and conditions from the ICA for such tariff offerings?**

AT&T and SBC Illinois both want to agree to language proposed for this issue by Dr. Zolnierek on behalf of Staff. The problem is that Dr. Zolnierek provided one set of proposed language in his verified statement, which AT&T stated it will accept (see AT&T Init. Br., pp. 16-17), and provided a somewhat different set of proposed language to SBC in response to a data request, which SBC stated it would accept (see SBC Init. Br., pp. 23-24).[9] Having considered the language for Section 1.30.2 that is set forth on pages 23-24 of SBC's Initial Brief and page 24 of Staff's Initial Brief, AT&T can agree to this language if it is revised to include the following parenthetical at the end of the second sentence:

> (in which case AT&T may incorporate such products and services including legitimately related rates, terms and conditions by amendment into this Agreement)

This parenthetical statement was included in the language presented by Dr. Zolnierek in this verified statement. (ICC Staff Ex. 1.0, p. 21, note 41)

GTC Issue 5:

A. Should the TELRIC rates in the Pricing Schedule be automatically updated when the rates change based upon ICC or FCC proceedings affecting wholesale prices, including tariff revisions, or should an amendment be required to incorporate such rate changes?

B. AT&T Issue: When amendments are required for price changes and/or changes in related terms, what procedures should be followed?

Based on the briefs, AT&T, SBC and Staff do not appear to be in substantive disagreement as to how this issue should be resolved: All agree changes to TELRIC prices in the ICA as a result of a Commission order changing SBC's TELRIC prices should be immediately

[9]There is no dispute over the language for Section 1.1.1, although the GTC Issues matrix in the AT&T-SBC Joint Submission of Disputed Language is marked, incorrectly, in a manner that suggests the language is disputed. The discrepancy only relates to Dr. Zolnierek's proposed language for Section 1.30.2.

effective in accordance with the date specified in the Commission's order, but that such pricing changes should also be documented by an appropriate amendment to the ICA (even if the amendment is not drafted, filed with the Commission and approved by the Commission until after the pricing changes become effective in accordance with the Commission's order establishing new TELRIC prices). AT&T has considered the language proposed by Staff for Section 1.30.4 of the ICA at page 29 of Staff's Initial Brief, and is willing to accept it with some modifications. Specifically, AT&T would accept the following language for Section 1.30.4:

> The rates set forth in the Pricing Schedule to this Agreement are subject to change based upon the outcome of Illinois Commerce Commission proceedings affecting wholesale prices which are given general applicability by the Commerce Commission, including carrier-specific dockets that are given general applicability, where the outcome produces rates different than the rates set forth in the Pricing Schedule. Absent a stay of such an outcome, the affected rate(s) shall be modified consistent with the outcome via written amendment to the Agreement and/or its Pricing Schedule, as appropriate, within thirty (30) days after receipt of written notice by one Party from the other Party. Where such rate differences are accompanied by or are the result of changes to terms and conditions that are legitimately related to the item(s) associated with the affected rates, then the Parties shall include in their amendment conforming modifications to such terms and conditions. If the Parties disagree as to the appropriate terms and conditions requiring modification due to a price change requested pursuant to this Section, either Party may seek resolution of the dispute in accordance with the provisions of Section 1.9 of this Article. The modified rates and any associated modified terms and conditions shall take effect upon the effective date set forth in the Commission order that approves the rate. If the order approving the rate is silent as to the effective date, then the rate would become effective upon the approval of the amendment by the Commission or within sixty (60) days after receipt of the written notice described above, whichever is sooner, unless otherwise agreed by the parties. If the Amendment becomes a matter of dispute, either Party may request immediate rate relief from the Commission and, in any event, shall have the rate change provided on a retroactive basis to the effective date set forth in the Commission order which established the changed rate requested by either Party. SBC is to file a compliance tariff within thirty (30) days of the date of any final order modifying a rate contained on the Pricing Schedule, or setting a new rate that is to be included on the Pricing Schedule. Nothing in this paragraph is intended to limit either Party's right to obtain modification of any rates in this Pricing Schedule or any associated terms and conditions in accordance with other terms of this Agreement, including but not limited to the Agreement's "Change in Law; Reservation of Rights" provision Section 3.0.

In comparison to Staff's proposed language, the foregoing language (i) deletes the specific reference to Docket 02-0864, which no longer seems necessary; (ii) deletes references to "asterisked" rates, the purpose of which has not otherwise been explained; (iii) deletes the clause in the sixth sentence relating to the Commission order imposing a "later effective date", which is not needed since earlier text makes it clear that an effective date specified in the Commission's order controls; (iv) deletes the words "applicable or" in the third sentence as unnecessary given the term "legitimately related"; and (v) makes other typographical corrections.

GTC Issue 6: Which audit language for PLU is appropriate?

This issue has been settled subsequent to the filing of the parties Initial Briefs. See Revised Seventh Joint Notice of Settled Issues.

GTC Issue 7: Should CLECs be responsible for the cost associated with changing their records in SBC-Illinois' systems when CLECs enter into a merger, assignment, transition, etc., agreement with another CLEC?

As it did in its Initial Brief, AT&T accepts Staff's proposed resolution of this issue. (AT&T Init. Br., pp. 22-23) SBC's argument oversimplifies this issue by suggesting that what SBC's charges are to modify its records relating to AT&T and its customers should AT&T be involved in a merger, acquisition or similar transaction is not part of the issue. (SBC Init. Br. pp. 35-36) Given that AT&T has disputed whether SBC should be able to impose any charges for this records work (see AT&T Init. Br., p. 23), determining the amount of the charges is certainly relevant to this issue. Staff's recommendation that the BFR process be applicable provides a Commission-established procedure for determining the amount of the charges (before work is initiated), and is acceptable to AT&T.

III. INTERCONNECTION ISSUES (ICA ARTICLE 3)

Interconnection Issue 1: Where SBC elects to subtend another LEC's tandem switch for exchange access and intraLATA toll traffic, may AT&T interconnect indirectly to SBC via such tandem for local traffic?

While SBC and Staff generally agree with AT&T's right to establish indirect interconnection with SBC through the use of a third party's facilities that interconnect directly to SBC within its operating network (SBC Init. Br., p. 38; Staff Init. Br., pp. 32-33), they create an issue where none should exist in the circumstances underlying Interconnection Issue 1. Specifically, they oppose AT&T's proposed language because, they say, it does not define physical and financial responsibility for the transport of traffic over the third party's facilities beyond the point of interconnection ("POI") with SBC in SBC's operating network. However, Interconnection Issue 1 only involves situation in which SBC has already elected to subtend another local exchange carrier's tandem switch for exchange access and intraLATA toll traffic. Thus, AT&T is only seeking to utilize network arrangements that SBC has already made with the third-party carrier. That AT&T's right to utilize indirect interconnection with SBC Illinois would arise only in circumstances in which SBC has already established the arrangements to subtend the third-party LEC's tandem switch is clear from AT&T's proposed language for ICA Section 3.2.5.1:

> Where SBC Illinois's end offices subtend another ILEC's tandem switch for local traffic and/or exchange access, AT&T may, at its discretion, interconnect with SBC-Illinois for local traffic and/or exchange access via the other ILEC's tandem switch or at the SBC-Illinois end office.

As AT&T explained, this method of interconnection under these circumstances is the most efficient method for AT&T and SBC Illinois to exchange small volumes of traffic.[10] (See AT&T Init. Br., p. 27) Presumably, SBC Illinois would not have elected to subtend the third-party LEC's tandem had SBC not determined that this represented the most efficient arrangement available to it under the circumstances. (See id.)

Staff states that AT&T's proposal leaves unresolved financial responsibility for traffic between the third-party LEC's tandem and the third-party LEC's point of interconnection with SBC Illinois. (Staff Init. Br., p. 33) However, AT&T has made it clear that it is seeking to use the third-party carrier's transiting service to exchange traffic with SBC (see AT&T Init. Br., pp. 25, 26), and would be responsible for the transit fees for its originating traffic being delivered to SBC. (Id., p. 29) Under AT&T's proposal, SBC would not be required to deliver its originating traffic to AT&T using the third-party LEC's transport facilities; rather, if it deems it appropriate (e.g., because it is delivering a sufficient volume of traffic to AT&T), SBC is free to order separate direct trunking from AT&T to transport SBC's originating traffic. (Id., p. 27) In any event, SBC should remain responsible for the costs of transporting and terminating its originating traffic from the POI in its operating network to the AT&T terminating switch, just as it would be under direct interconnection.

Other arguments made by SBC and Staff in their Initial Briefs have already been fully addressed in AT&T's Initial Brief on Interconnection Issue 3, and those responses will not be repeated here. (See AT&T Init. Br., pp. 24-33) The Commission should resolve Interconnection Issue 1 by adopting AT&T's proposed contract language for Section 3.2.5.1 of the ICA.

[10]SBC acknowledges that the only areas in the State in which SBC has elected to subtend another LEC's tandem switch involve four downstate rural exchanges where SBC has subtended the Verizon tandem. (SBC Init. Br., p. 37)

That having been said, AT&T's specific concern with the modified language proposed by Staff in its Initial Brief (pp. 32, 34) for Section 3.2.5.2 of the ICA is that it could be construed as requiring AT&T to be responsible for the cost of transport and termination of SBC's originating traffic from the POI (on SBC's network) to the AT&T terminating switch. The use of indirect interconnection should not change the basic responsibilities in this regard that apply when direct interconnection is used, in accordance with the "calling party's network pays" regime. Accordingly, under the circumstances presented by Interconnection Issue 1, AT&T would be responsible for the cost of delivering its originating traffic over the third party's transit facilities to the third-party carrier's POI with SBC (and for the cost of transport and termination beyond that POI to the SBC terminating switch); and SBC would be responsible for the transport and termination of its originating traffic from the POI with the third-party carrier to the AT&T terminating switch. As noted above, it would be in SBC's discretion whether to use the third-party carrier's transit facilities, or separate trunking, to transport SBC's originating traffic. Therefore, if Staff's proposed language for Section 3.2.5.2 were to be adopted, it would need to be modified to read as follows:

> AT&T may, where it makes arrangements with a third party to do so, provide facilities on its side of the POI using a third party's tandem switch or other facilities. Each party remains responsible for the facilities on its side of the POI. In addition, AT&T not only remains responsible for the facilities on its side of the POI, but for ensuring that any facilities provided by a third party on AT&T's side of the POI comply with the provisions of this interconnection agreement. Each Party shall be responsible for the costs of transporting its originating traffic from the POI to the terminating switch of the other Party, including any third party transit charges, and the Parties shall compensate each other for transport and termination of their respective originating traffic in accordance with Article 21 of this Agreement.

Interconnection Issue 2: Does AT&T have the right to use UNEs for the purpose of network interconnection on AT&T's side of the POI?

Resolution of Interconnection Issue 2 boils down to a question of whether the Commission will apply the FCC's current UNE rules – which clearly support AT&T's position that it should be allowed to obtain transport from SBC on AT&T's side of the POI as a UNE (see AT&T Init. Br., pp. 34-36) – or whether the Commission will apply what the FCC appears to have said in its press release announcing the yet-to-be-issued 2003 Triennial Review Order (which is the only "legal support" SBC offers for its position (SBC Init. Br., p. 41). Staff recommends that this issue be decided based on the FCC's current rules, rather than based on an attempt to divine, from the FCC's press release, what the Triennial Review Order may say on this topic. (Staff Init. Br., pp. 35-36) AT&T agrees with Staff (see AT&T Init. Br., p. 36). AT&T points out that SBC's attempt to apply the upcoming Triennial Review Order to this issue is contrary to SBC's own position on GTC Issue 1 and the related SBC Issue 1, where SBC seeks to establish February 19, 2003 (i.e., the day prior to issuance of the Triennial Review Press Release) as the baseline date for application of the ICA's change of applicable law provisions. Accordingly, the Commission should resolve this issue by finding that AT&T has the right to use UNEs for network interconnection facilities, and should adopt AT&T's proposed contract language for Section 3.3.2 of the ICA, which states:

> AT&T may obtain facility capacity for network interconnection trunking (i) from SBC-Illinois under its access tariff, (ii) from SBC-Illinois under Article 9 of the Agreement, (iii) from AT&T's own facility inventory, or (iv) from an alternative services vendor.

Interconnection Issue 3: What terms apply to AT&T's intra-building interconnection to SBC-Illinois?

SBC's arguments on this issue were substantially anticipated and addressed in AT&T's Initial Brief (pp. 37-41). AT&T emphasizes that it is not seeking the right to implement unreasonable routing of its intra-building cable (e.g., knock holes in walls, etc.), as SBC seems to

fear (SBC Init. Br., pp. 45-46), as AT&T's language only calls for cable to be installed by the shortest **practical** route. (See AT&T Init. Br., p. 40) AT&T also understands that the use of coaxial cable for interconnection may be limited under certain circumstances by technical considerations. (See SBC Init. Br., pp. 44-45) Finally, with respect to SBC's concern that it would not be compensated for certain facilities costs associated with placing the intra-building cable (SBC Init. Br., p. 46), AT&T again emphasizes that under its proposed contract language for Section 3.3.3 of the ICA, AT&T would bear the entire cost of providing, installing and maintaining the intra-building cable. (See AT&T Init. Br., p. 40)

SBC also asserts that by its proposed contract language relating to Collocation Issue 2(b) (i.e., for Section 12.3.5.7 of the ICA), AT&T is proposing vague language that would permit it to access UNEs without maintaining a collocation presence in SBC's central office. (SBC Init. Br., p. 46) However, as AT&T explained in the section of its Initial Brief on Collocation Issue 2(b), AT&T's proposed language for Section 12.3.5.7 comes from the parties' existing ICA, and in any event would apply only to "condo" building arrangements established at the time of the AT&T divestiture (1984), of which there are only three in Illinois. (AT&T Init. Br., pp. 186-190) AT&T does not understand why these arrangements are suddenly objectionable to SBC.

Accordingly, the Commission should resolve Interconnection Issue 3 by adopting AT&T's proposed language for Section 3.3.3 (including its subsections 3.3.3.1 through 3.3.3.5) of the ICA.

Interconnection Issue 5

> **AT&T Issue: Does AT&T have the right to establish a POI at any technically feasible point on SBC's network and does each originating party have the obligation to transport its traffic to the POI or should the agreement provide certain exemptions from the Act that relieve SBC from its obligation to interconnect at any technically feasible point and to transport its traffic from its originating switch to the POI?**

SBC Issue: Are there reasonable limitations on AT&T's right to interconnection with SBC Illinois free of charge? For instance, is AT&T entitled to receive expensive interconnection, FX interconnection and interconnection outside SBC's franchised territory free of charge as discussed further in issues 6-9?

SBC states that its arguments concerning Interconnection Issue 5 are presented under Interconnection Issue 9. (SBC Init. Br., p. 47) Staff discussed Interconnection Issues 5 through 9 together. (Staff Init. Br., pp. 37-45) AT&T will respond to SBC's and Staff's specific arguments concerning Interconnection Issues 6 through 9 below. AT&T points out that it presented much of its background discussion and support for its position on Interconnection Issues 6 through 9 in the section of its Initial Brief on Interconnection Issue 5 (pp. 41-53). AT&T notes that Staff agrees with AT&T's fundamental points that it is entitled to establish only one POI within a LATA, that the POI does not need to be located within SBC's local calling area, that SBC has failed to establish that AT&T has elected "expensive interconnection", and that SBC may not charge origination charges for delivering its originating traffic to the POI. AT&T also notes that it has accepted Staff witness Dr. Zolnierek's proposed resolution of Interconnection Issue 5. (AT&T Init. Br., p. 53)

Interconnection Issue 6

SBC Issue: In one-way trunking architectures, does Ameritech Illinois have an obligation to compensate AT&T for any transport used by AT&T to terminate Local/IntraLATA traffic originated by Ameritech Illinois if AT&T's POI and/or switch is outside the local calling area and the LATA where the call originates?

Interconnection Issue 7

SBC Issue: When AT&T has requested a POI located outside the local calling area of Ameritech Illinois's end user originating the call, should AT&T be financially responsible for the transport outside the local calling area for Local/IntraLATA traffic originated by Ameritech Illinois?

SBC discusses Interconnection Issues 6 and 7 together in its Initial Brief (pp. 48-59). As noted in AT&T's Initial Brief on these issues (pp. 53-59), SBC's proposals relating to these

issues have already been rejected by the Commission in Docket 01-0614. While SBC tries mightily to recharacterize the issue as not involving "single point of interconnection", the fact remains that this is the same issue SBC presented and raised in Docket 01-0614.[11] SBC's assertion that the problem it is attempting to address arises because SBC must transport traffic past a "nearby" AT&T switch to a more distant AT&T switch is simply a different way of saying what SBC's objectionable contract language would provide for: that for SBC-originated traffic, AT&T's terminating switch must be within the same local calling area where the call originates, or else AT&T must pay some or all of SBC's transport costs. This is contrary to federal law, as the Commission held in Docket 01-0614.[12] (See AT&T Init. Br., p. 56, and Staff Init. Br., pp. 38-39).

The cases that SBC cites at pages 54-59 (none of which, SBC admits, compel a result on its favor on this issue) were decided prior to this Commission's June 11, 2002 Order in Docket 01-0614. Indeed, a review of the Docket 01-0614 Order shows that the two FCC decisions SBC cites here (the *Verizon 271 Order* and the *Kansas/Oklahoma 271 Order*) were cited in Docket 01-0614 on this issue and were considered by the Commission in reaching its decision (as were most of the other evidence and arguments that SBC has presented on these issues in this case).

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[11] Illinois Bell Telephone Co., *Filing to implement tariff provisions relating to Section 13-801 of the Public Utilities Act*, Docket 01-0614 (June 11, 2002), pp. 86-106.

[12] SBC **makes absolutely no mention** in its eleven-page discussion of Interconnection Issues 6 and 7 of this Commission's decision in Docket 01-0614, even though Staff witness Zolnierek (ICC Staff Ex. 1.0, pp. 36-38) and AT&T witnesses Finney-Schell-Talbott (AT&T Ex. 2.0, p. 51) both cited it in their direct testimonies as support for their positions. Further, although persisting in its argument that AT&T has used "expensive interconnection" (SBC Init. Br., pp. 50, 53), SBC also makes no mention of this Commission's order in the *Verizon-Global NAPS Rehearing*, where, as Dr. Zolnierek pointed out in his testimony, the Commission ruled that "expensive interconnection" does not include increased transport costs. (See ICC Staff Ex. 1.0, p. 40)

Further, SBC's complaint that AT&T could easily minimize SBC Illinois' transport costs, but chooses not to (SBC Init. Br., p. 50), is simply another attempt to argue that CLECs should configure their networks in a manner that matches SBC's legacy network. There is no requirement that AT&T, or any other CLEC, do so. AT&T witnesses Finney-Schell-Talbott discussed this point at length in their direct testimony. (AT&T Ex. 2.0, pp. 39-43, 57-64)

SBC does state that it has revised its original proposal such that under its current proposal, it will only charge AT&T one of the two interoffice mileage charges. (SBC Init. Br., p. 52) Based on SBC witness Mindell's testimony, SBC states that this will make the additional charges just 25% of what AT&T witnesses Finney-Schell-Talbott calculated in their testimony. (Id.) (Actually, Mr. Mindell said 28%, not 25%. See SBC Ex. 6.0, p. 26) Although AT&T acknowledges that under this revised proposal the additional charges to AT&T would be less, AT&T has been unable to replicate or verify Mr. Mindell's statement that the additional charges would be 28% of what AT&T originally calculated. However, regardless of whether SBC's current proposal reduces the additional charges to AT&T to 75%, 50% or 25% of what AT&T calculated based on SBC's original proposal, the additional charges are still unlawful and inappropriate, and must be rejected by the Commission.

As stated in AT&T's Initial Brief, Dr. Zolnierek's proposed resolution of Interconnection Issues 6 and 7 is acceptable to AT&T. (AT&T Init. Br., pp. 58. 59)

Interconnection Issue 8

> **SBC Issue: When AT&T has requested a POI located outside the local calling area of Ameritech Illinois's end user originating the call, should AT&T be financially responsible for the transport outside the local calling area for FX traffic originated by Ameritech Illinois?**

SBC attempts to distinguish the decisions that support AT&T's and Staff's position on this issue, arguing that they held that FX traffic is local traffic and therefore not subject to access

charges, not that FX traffic is not subject to the type of additional transport charges SBC proposes.[13] (SBC Init. Br., pp. 63-64) This purported distinction is unpersuasive. The key point established by these cases is that FX traffic is local traffic, not toll traffic; therefore, for intercarrier compensation purposes, it must be treated as local traffic (as AT&T and Staff propose), not like toll traffic (as SBC proposes).[14] SBC shows that, at bottom, it is still quarreling with this fact: in its concluding paragraph on this issue, SBC argues that ""FX calls present a special case because it is, in reality, SBC Illinois toll traffic for which SBC Illinois can no longer bill . . . The point is that these are not truly local calls." (SBC Init. Br., p. 64) The fundamental principle here is that under the calling party's network pays regime applicable to local calling, the carrier originating traffic is responsible to pay for the transport to the terminating switch. SBC's proposed language for Interconnection Issue 8 (ICA Section 4.3.3) would make AT&T responsible for some or all of the costs of transporting SBC-originated traffic outside of SBC's local calling area in which the call originated.[15]

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[13]The decisions are *In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection*, CC Docket Nos. 00-218, 00-249 and 00-251, Memorandum Opinion and Order (Rel. July 17, 2002) (referred to in these briefs as the *"Virginia Arbitration Decision"*); *Essex Telcom, Inc. v. Gallatin River Communications, L,L,C,*, Docket 01-0427 (July 24, 2002); and *Global NAPS Illinois, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement with Verizon North, Inc. f/k/a GTE North Incorporated and Verizon South, Inc., f/k/a GTE South Incorporated*, Docket 02-0253, Order on Rehearing (Nov. 7, 2002) (referred to in these briefs as *"Verizon-Global NAPS Rehearing"*).

[14]Further, these cases were all decided well after the *Level 3 Arbitration* (Docket 00-0332 (August 30, 2000)) on which SBC relies. (SBC Init. Br., p. 64)

[15]SBC also states in its concluding paragraph on Interconnection Issue 8 "The point is not that SBC Illinois has lost toll revenues. . . .SBC Illinois is not trying to replace its lost toll revenues – it merely wants to recover its costs of providing transport to AT&T on these calls." (SBC Init. Br., p. 64) However, revenue is revenue, and all SBC's disclaimer does is demonstrate that SBC's proposal is an effort to recoup some or all of the toll revenue that SBC thinks it is entitled to because "these are not truly local calls." (Id.)

SBC also states that it is revising its proposed language in order to, it claims, eliminate what Staff witness Dr. Zolnierek found to be asymmetrical aspects of SBC's original proposal. (SBC Init. Br., pp. 62-63) However, Staff, having reviewed this revised proposal (as presented by SBC witness Mindell in his rebuttal testimony, see SBC Ex. 6.1, p. 17), concludes that SBC's revised proposal is unclear and seemingly contradictory to SBC's other proposals in this case, and that "Mr. Mindell has not supplied a complete or workable proposal." (Staff Init. Br., p. 43) AT&T agrees with Staff. SBC's revised language does not cure the problems with its proposal on Interconnection Issue 8.

Accordingly, the Commission should resolve Interconnection Issue 8 in the manner recommended by Dr. Zolnierek, by rejecting SBC Illinois' proposed contract language for Sections 4.3.3, 4.3.3.1 and 4.3.3.2 of the ICA.

Interconnection Issue 9

> **SBC Issue: When AT&T has requested a POI located outside the local calling area of Ameritech Illinois's end user originating the call, should AT&T be financially responsible for the transport outside the local calling area for FX Traffic originated by Ameritech Illinois?**

AT&T relies on its arguments in the section of its Initial Brief on Interconnection Issue 9. (AT&T Init. Br., pp. 62-65) AT&T notes that while it objected to Dr. Zolnierek's recommendation, it proposed a modification to SBC's proposed language for Section 4.3.1 that would make it acceptable to AT&T. (Id., p. 65)

In addition, to make clear AT&T's position on one point questioned by SBC in its Initial Brief (p. 67), it is AT&T's position that under the indirect interconnection arrangement (i.e., the arrangement that is the subject of Interconnection Issue 1), SBC would be responsible for transporting its originating traffic from the "POI" in SBC Illinois' territory to the AT&T terminating switch. This topic is discussed in greater detail in the section of this Reply Brief on

Interconnection Issue 1, where we point out that SBC would have the choice, at its discretion, to transport its traffic via its existing tandem arrangement with the third party LEC, or via separate direct trunking. AT&T, of course, would be responsible for transport of its originating traffic over the third-party's transit facilities to the "POI" (and beyond, to the terminating SBC switch). AT&T points out that AT&T and SBC Illinois utilize one-way trunks in exchanging traffic with each other (a fact that Staff's recommendation for Interconnection Issue 9 does not appear to take into account). (See AT&T Init. Br., p. 27; AT&T Ex. 2.0, pp. 23-24) This means that where AT&T elects indirect interconnection with SBC for AT&T-originated traffic, SBC is by no means precluded from directly interconnecting with AT&T for SBC-originated traffic. In other words, AT&T's decision to use indirect interconnection where SBC has subtended a third-party carrier's tandem, and to use the third party carrier's transit facilities to deliver AT&T-originated traffic to SBC at the POI in SBC territory, does not force SBC to also use the third party carrier's transit facilities to transport SBC-originated traffic to AT&T.

Interconnection Issue 10: Should the charges for the use of each Party's SS7 network be reciprocal?

SBC's Initial Brief represents a continuation of SBC's efforts to evade having to compensate AT&T for SBC's use of AT&T's SS7 network to complete SBC-originated local calls – a functionality without which SBC-originated local calls *could not be completed*. (AT&T Ex. 7.0, pp. 9-10; AT&T Ex. 7.1, pp. 2-4) The Commission should reject both SBC's originally-proposed language and its newly-unveiled language relating to this issue, and adopt AT&T's proposed language (subject to the modification, offered in AT&T's Initial Brief (p. 71), that the

parties bill each other symmetrical prices for use of their respective SS7 networks, at the prices set forth in the Pricing Schedule or such other symmetrical rate that the parties may negotiate).

The first (and therefore presumably, in SBC's view, most important) point made in SBC's Initial Brief on this issue is the assertion that "there is no need for the parties to charge one another additional rates for SS7 signaling" because "as Ms. Chapman testified on cross-examination, there are SS7 costs included in the reciprocal compensation rates that both parties charge one another." (SBC Init. Br., p. 70) AT&T disputes this assertion, and the Commission should not accept it as credible. What is noteworthy here is that this assertion, which SBC now touts as dispositive, was not made in SBC's prepared testimony, in its Answer to the Arbitration Petition, or under "SBC Illinois Position" in the "Interconnection" DPL that SBC filed with its Answer. If in fact SS7 costs were included in the reciprocal compensation rates, SBC would have said so in these earlier documents. The fact that this "fact" first came out during cross-examination (and from a witness whose responsibilities do not include pricing or cost studies, see SBC Ex. 2.0, p. 1) makes its reliability suspect.

There are other facts that cast further doubt on the accuracy of SBC's assertion. First, the Pricing Schedule to the ICA contains separate charges for SS7 signaling, on a per-message basis (see p. 10 of the Pricing Schedule), which are stated separately from the charges for Reciprocal Compensation (switching, transport and termination). (See p. 12 of the Pricing Schedule) If the SS7 charges were included in the reciprocal compensation charges, there would have been no need to state separate SS7 charged in the Pricing Schedule. Second, SBC *currently* bills AT&T separately for SS7 signaling when AT&T utilizes SBC's SS7 network for local calling. (AT&T Ex. 7.0, p. 6) If in fact SS7 charges were included in the reciprocal compensation rates, there would be no need for SBC to be separately billing AT&T for AT&T's use of SBC's SS7

signaling service. Third, Ms. Chapman stated in her direct testimony that "If AT&T and SBC Illinois were to interconnect comparable SS7 networks, both parties would benefit from the use of the other's SS7 network, and both parties should simply bear the cost of their own network and their cost of interconnecting." (SBC Ex. 2.0, p. 78) This proposal is inconsistent with the "fact" that SS7 charges are included in existing reciprocal compensation rates.

With SBC's assertion that SS7 costs are included in the parties' reciprocal compensation rates exposed as unfounded, SBC's follow-on assertion that "AT&T offered no evidence to support its claim for additional [sic; revenues?] for SS7 costs over and above that which it currently recovers" can be seen as bogus: AT&T does not currently recover any SS7 costs from SBC. Moreover, it is with a great deal of *chutzpah* that SBC scolds AT&T for failing to provide "evidence" to respond to an assertion that SBC first made in cross-examination in this case (and in fact, after AT&T's witness on this issue had left the witness stand).

Next (ignoring all considerations of efficiency and conservation of capital), SBC asserts that AT&T should not be permitted to exchange SS7 signaling for local traffic over access arrangements (SBC Init. Br., p. 70), even though that is exactly what the parties do today (AT&T Ex. 7.0, p. 9; AT&T Ex. 7.1, pp. 3-4), adding that "this would be contrary to the terms of the access tariffs from which [AT&T] purchases SS7 services." However, SBC provides no citation to support the latter assertion.

AT&T acknowledges that it purchased the existing "D-Links" and established the existing interconnection arrangements between the parties' SS7 networks in 1992, prior to the advent of local service competition, under SBC's access tariff (which, as AT&T witness Hammond testified, was the only option available at the time (AT&T Ex. 7.0, p. 9), using the ACNA of AT&T's long distance operations (AT&T, of course, having no local service

operations in 1992). (See SBC Init. Br., p. 70) However, these facts are irrelevant to the present dispute. As the industry has evolved, AT&T and SBC must now exchange *local* traffic, and utilize each other's SS7 networks to do so, which they do over the existing D-Links for local, toll and long distance traffic (AT&T Ex. 7.0, pp. 9-10; Tr. 69) – a fact SBC has **never denied** in this case. All that AT&T is seeking here is to be compensated by SBC for SBC's necessary use of AT&T's SS7 network to initiate and complete SBC-originated local traffic.

SBC's next concern is that it is impossible to segregate SS7 signaling associated with local traffic from SS7 signaling associated with toll traffic if the SS7 signaling for both types of traffic is transmitted over the same interconnection links. SBC also states that the use of estimated percentage factors is objectionable. (SBC Init. Br., pp. 70-71) AT&T disputes the first assertion (which, again, never appeared in SBC's testimony in this case, and is unsupported by any citations), and does not understand AT&T's objection to the use of estimated percentage factors. The parties today use estimated factors to jurisdictionalize traffic which cannot be or was not directly measured – in fact, one of the issues in this arbitration, GTC 6 (which has since been settled) involved the procedures for determining and auditing the percentage of local usage in the parties' traffic that cannot be jurisdictionalized from call records. (See AT&T Ex. 3.0, pp. 3-4) In this connection the Commission should note that whereas switching, transport and termination charges are billed on a per minute of usage basis (and with respect to tandem transport, per mile as well), SS7 signaling charges are only billed on a per-message basis. Therefore, jurisdictionalizing SS7 signaling for billing purposes is not nearly as important as it is for voice traffic.[16] (See prices listed on pp. 10 and 12 of the ICA Pricing Schedule.)

[16]As with most of the rest of SBC's arguments on Interconnection Issue 10, this Reply Brief is AT&T's first opportunity to respond to SBC's concern about jurisdictionalizing SS7 messages, which first appears in SBC's Initial Brief. In response, AT&T states that it would be willing to

SBC next complains that AT&T is attempting to gain "a temporary benefit" from "the traffic imbalance that currently exists in Illinois." (SBC Init. Br., p. 72) AT&T does not understand what SBC means by a "temporary benefit." The parties are in agreement that at the present time a substantially greater percentage of the traffic between the parties is originated by SBC than is originated by AT&T. (See Id.) That means that SBC uses AT&T's SS7 functionality to initiate and complete calls substantially more than AT&T uses SBC's SS7 functionality. With SS7 signaling billed on a per-ISUP message basis, AT&T currently ought to be billing SBC more for SS7 signaling (even at equal rates) than SBC bills AT&T.[17] As the industry evolves, it may (or may not) transpire that the traffic between AT&T and SBC comes more into balance. SBC's introduction of ISP-bound and FX traffic as a concern (and its continued complaining that FX traffic is really toll traffic, not local traffic, this Commission's rulings that it must be treated as local traffic notwithstanding (see discussion under Interconnection Issue 8)) is a red herring. First, as noted above, SS7 signaling is billed on a per ISUP message basis, not on a per MOU (or a per-mile basis, which is particularly relevant to SBC's toll versus local distinction). Thus, the concerns that have arisen with respect to ISP-bound and FX traffic – namely, the possibility of carriers taking advantage of per-MOU compensation structures that recovered both set-up and duration-related costs by concentrating on long-duration calls – are simply not present in the case of charges for SS7 signaling. Second,

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bill SS7 signaling for both local and toll calls at a common, negotiated rate, which would eliminate the need to jurisdictionalize the ISUP messages.

[17]In fact, currently SBC bills AT&T for SS7 signaling and AT&T pays those bills, while AT&T bills SBC for SS7 signaling but SBC refuses to pay those bills – even though mutual compensation for SS7 signaling is provided for in the parties' current interconnection agreement. (AT&T Ex. 7.0, pp. 4-7)

SS7 functionality is needed to initiate and complete all types of calls, be they local, intraLATA toll or interLATA toll.

In its Initial Brief, SBC has introduced a completely new contract language proposal for this issue. (SBC Init. Br., pp. 73-74) AT&T would be tempted to move to strike this proposal, except that on examination one sees that it largely tracks points made in SBC witness Carol Chapman's direct testimony – which then raises the question, why did SBC withhold this ICA language proposal until its Initial Brief? In any event, for the reasons articulated in AT&T's Initial Brief, SBC's language proposal (which essentially amounts to no compensation between the parties for their use of each other's SS7 networks) should be rejected. The Commission should adopt AT&T's proposal to resolve this issue (including the use of equal rates between the parties for billing for SS7 signaling).[18]

[18]SBC complains that AT&T has not provided a contract language proposal for billing equal SS7 rates (SBC Init. Br., p. 72 note 32), as though this would be hard to develop. If the Commission needs language to refer to, AT&T points out that the parties' current interconnection agreement states: "Each party shall charge the other Party equal and reciprocal rates for CCIS signaling at the rates set forth in Item V of the Pricing Schedule." (AT&T Ex. 7.0, p. 5)

IV. UNE ISSUES (ICA ARTICLE 9)

UNE Issue 1: Should the ICA definition of Network Elements be that from the Illinois Public Utilities Act?

SBC agrees with AT&T that the term "network elements" should be defined in the ICA as it is defined in Section 13-216 of the Illinois Public Utilities Act. SBC disagrees that "network element" and "unbundled network element" should be used interchangeably, however. Essentially, SBC's proposal is tantamount to changing the definition of "network element" simply by inserting the word "unbundled" in front of it. That is, SBC agrees that "network element" should be defined as "a facility or equipment used in the provision of a telecommunications service . . . [and] includes features, functions, and capabilities that are provided by means of the facility or equipment, including, but not limited to, subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service" but contends that the definition of network element changes when the modifier "unbundled" in inserted in front of it. In that instance, SBC contends, the phrase "unbundled network element" is transformed into a subset of the "network elements" SBC is required to provide – on both a bundled and unbundled basis – in Illinois. That subset is the minimum list of UNEs the FCC requires an ILEC to provide to CLECs.

SBC's contentions (as well as those of Staff to the extent Staff agrees with SBC) must be rejected. Section 13-801 does, in various places, refer to both "network elements" and "unbundled network elements." In doing so, however, the Illinois Public Utilities Act does not attribute a different meaning to the phrase "network element" depending on whether it is unbundled or not. To the contrary, Section 13-801(d) requires SBC to provide AT&T with nondiscriminatory access to network elements on any unbundled or bundled basis. The Act

makes no distinction between network elements provided on a bundled basis and network elements provided on an unbundled basis. A network element is a network element, whether it is a bundled element or an unbundled element.

Moreover, Section 13-801(d)(3) requires SBC to combine for AT&T "any sequence of 'unbundled network elements' that it ordinarily combines for itself." The Illinois Public Utilities Act defines network element; it does not contain a different definition for "unbundled network elements" – and for good reason. Whether bundled or unbundled, a "network element" is "a facility or equipment used in the provision of a telecommunications service . . . [and] includes features, functions, and capabilities that are provided by means of the facility or equipment, including, but not limited to, subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service," consistent with AT&T's proposal. Indeed, as AT&T stated in its Initial Brief, to include a definition of "network element" that is different than (i.e., more narrow than) the definition included in the Illinois Public Utilities Act would unlawfully limit SBC's obligations and AT&T's rights under state law.

In sum, Section 13-801 makes it very clear that it is imposing "additional State requirements contemplated by, but not inconsistent with, Section 261(c) of the federal Telecommunications Act of 1996, and not preempted by orders of the Federal Communications Commission." These "additional State requirements" are the requirements contained in Section 13-801. Thus, it is erroneous for SBC to contend, as it does, that it is only required to provide access to those network elements it has been required to unbundle by the FCC as a matter of federal law. In addition, and contrary to SBC's arguments, the Commission's Order in Docket 01-0614 expressly acknowledges that "there is no mention of 'necessary' or 'impair' in the

definition of network elements.'" See Order in Docket 01-0614, par. 76. The Commission has already counseled SBC that:

> to the extent that Ameritech has argued that Section 251(d)(2) of the federal act requires a state commission to engage in a necessary and impair analysis when dealing with any issue concerning unbundling, the Commission rests on its prior conclusion in the immediately preceding Section of this Order, that this argument is, in reality, an attack on the constitutionality of Section 13-801 and that the Commission is not the appropriate body to whom to make these arguments.

See Order, par. 82. This Commission has already determined, then, that it is not the appropriate body before which to advance these arguments. In fact, SBC acknowledges that it has appealed the Commission's Order to federal court. Accordingly, SBC's argument renders state law superfluous at best and meaningless in any event, and it must be rejected.

At page 79 of its Initial Brief, SBC cites excerpts from Section 790.320(a) of Code Part 790 (Ill. Admin. Code Part 790) to advance the mistaken impression that SBC is only required to provide network elements "which have been 'unbundled' in accordance with the 'requirements of Sections 251 and 252 of the Federal Act.'" What SBC fails to raise is the fact that in Section 790.320(b) of Code Part 790, this Commission's rule provides:

> Network elements to be provided by an ILEC, *include at a minimum:*
>
> 1) Any network element that the FCC determines must be unbundled through rules enacted by the FCC pursuant to sections 251 and 252 of the Federal Act, and
>
> 2) Any other network element that the Commission determines can be, and that the public interest requires to be, unbundled consistent with the Federal Act, the Act and the decisions of the federal courts and the FCC.

Nor does the language SBC references from the Commission's Order in Docket 99-0511 support SBC's decision. In fact, the record in that docket was marked "Heard and Taken" on August 10, 2000, almost a year prior to the enactment of Section 13-801. Order, p. 2. It is no surprise, then, that the Commission did not have the record before it to enable it to add to the list

of identified UNEs. Moreover, the Commission clearly stated: "The purpose of this proceeding is to establish interconnection requirements. Although related, which network elements should be unbundled and made available to CLECs is a separate inquiry." SBC's contention that the Commission's Order in Docket 99-0511 somehow supports its position is thus misplaced. In reality, the timing of that docket was such that the Commission could not expand the list of network elements contained in the rule based on the record before it. Contrary to SBC's contentions, then, nothing in Code Part 790 provides support for limiting the definition of unbundled network elements to only those UNEs the FCC has defined. AT&T's proposed language for UNE Issue 1 should be adopted consistent with the above.

UNE Issue 2: Should The ICA Definition Of Telecommunications Service Be As Stated In The Public Utilities Act, Or In The FCC Act?

SBC does not address this issue with any degree of specificity. AT&T agrees with Staff that the definition of "telecommunications service" contained in Section 13-203 of the Illinois Public Utilities Act is consistent with, albeit broader than, the definition contained in the federal Act. There is no legitimate dispute that AT&T is entitled to use all network elements, bundled and unbundled, to the maximum extent possible to provide any "telecommunications service" as defined by the Illinois Public Utilities Act. Indeed, to adopt a narrower definition would unnecessarily and unlawfully constrain AT&T rights under Section 13-801 of the Illinois Public Utilities Act and the orders of this Commission to use network elements "to the fullest extent possible to implement the maximum development of competitive telecommunications services offerings." See Section 13-801(a). Certainly the rights granted under the statute are not intended to be restrictive, as the language makes clear. AT&T's proposed language should therefore be adopted for UNE Issue 2.

UNE Issue 3: Must AT&T utilize UNEs for the provision of local exchange service to end users in order to utilize UNEs for the provision of other services?

Consistent with this Commission's Order in Docket 01-0614, AT&T is ready and willing to comply with all restrictions set forth in the FCC's *Supplemental Order Clarification.* AT&T therefore agrees with the alternative language proposed by Staff at pages 52 and 53 of its Initial Brief and recommends that the Commission adopt it.

UNE Issue 4: May AT&T use UNEs to provide service to itself and its affiliates?

SBC's proposed language and arguments on this issue were sufficiently addressed in AT&T's initial brief. Specifically, SBC ignores the Commission's Order in Docket 01-0614 concluding that AT&T is not limited to using UNEs to provide telecommunications services to end users only. Moreover, as discussed in AT&T's Initial Brief and in connection with UNE Issue 2 above, the definition of "telecommunications service" included in Section 13-203 of the Illinois Public Utilities Act does not limit such services to only those services provided to end users or the public. Certainly the Illinois General Assembly would have so specified if that was its intent, as it was in the case of "retail telecommunications service," which is limited to "a telecommunications service sold to an end user." AT&T's proposed language should thus be adopted for UNE Issue 4.

UNE Issue 5: Is AT&T entitled to interconnect at any technically feasible point? Is SBC required to physically cross connect AT&T's facilities with Ameritech's network?

The fatal flaw in SBC's proposal on this issue is clear from its Initial Brief. At page 89, SBC states that "there is no dispute as to the general requirement that SBC Illinois provide AT&T with non-discriminatory access to UNEs at any technically feasible method." Therein lies the problem. SBC's proposal is directly at odds with Section 13-801(d) of the Illinois Public Utilities Act, which requires SBC to provide AT&T with network elements "at ***any*** technically

feasible point." (emphasis supplied). It does ***not*** state that SBC must do so using any technically feasible method. The law is clear. If it is technically feasible for SBC to provide AT&T to access a network element at a particular point, SBC must do it. The particular point of access may dictate the method to be used or the parties can agree to the method, perhaps even one of the methods SBC proposes. But the law certainly does not limit the technically feasible points or methods available to AT&T, as SBC's proposed language would do. As such, AT&T's proposed language for UNE Issue 5 should be adopted.

UNE Issue 6: Should SBC be obligated to provide AT&T, in connection with an order for a UNE or UNE Combination, with any technically feasible network interface as described in industry standard technical references?

While AT&T requests that it have the option of designating any technically feasible interface, AT&T is only asking for those interfaces that are available or that currently exist in SBC's network. To clarify that AT&T's language is not intended to require SBC to build new interfaces, AT&T agrees, as SBC recommends, to add the language "when available" or "where such interface currently exists in the network" to satisfy SBC's concerns. As discussed in its Initial Brief, SBC's proposal to limit AT&T's access to "routes, technologies and facilities as SBC-AMERITECH may elect at its discretion" is directly at odds with Section 13-801(d) of the Illinois Public Utilities Act. The Commission should therefore adopt AT&T's proposed language with the following modification:

> At such time that AT&T provides SBC-AMERITECH with an order for particular unbundled Network Elements or Combinations, AT&T, at its option, may designate any technically feasible network interface that currently exists in the network, including without limitation, without limitation, DS0, DS-1 and DS-3 interfaces, and any other interface described in the applicable Telcordia and any other industry standard technical references. Any such requested network interface shall be provided by SBC-AMERITECH, unless SBC-AMERITECH provides AT&T, within fifteen (15) days, with a written notice that it believes such a request is technically infeasible, including a detailed statement supporting

such claim. Any such denial shall be resolved in accordance with the Alternative Dispute Resolution process set forth in Article 1 (General Terms and Conditions) of this Agreement. Unless otherwise specified, any references to DS-1 in this Article 9 shall mean, at AT&T's option, either DS-1 AMI or xDSL facility.

UNE Issue 7: What criteria should be used to determine whether network elements or unbundled network elements are "available"?

SBC's proposed language and arguments on this issue were sufficiently addressed in AT&T's Initial Brief and AT&T will not repeat the reasons SBC's proposal should be rejected. SBC's proposal essentially assumes the Commission's Order in Docket 99-0593 does not exist. As such, SBC's proposal is contrary to applicable and controlling law and must be rejected. AT&T agrees to the modification Staff made to AT&T's proposed language in Staff's Initial Brief and recommends that the Commission adopt that language.

UNE Issue 8(a): When SBC services are converted to UNE combinations, must SBC guarantee that service to the end user will never be disconnected during conversion?

SBC's proposed language and arguments on this issue were sufficiently addressed in AT&T's Initial Brief and AT&T refers the Commission to its discussions of UNE Issue 8 and UNE Issue 13. Briefly, UNE Issue 8(a) discusses the clear requirement in Section 13-801(d)(6) and the Commission's June 11, 2002 Order in Docket 01-0614 that there be no disruption in service when an end user's service is being migrated and no field work is required. AT&T refers the Commission to UNE Issue 13 for a detailed discussion of SBC's requirement to provide line splitting with UNE-P – a requirement imposed on it by the FCC and all of the other states in the SBC-Midwest region.

SBC curiously contends that AT&T's right to line splitting with UNE-P has already been litigated and rejected by the Commission in Docket 01-0662, SBC Illinois's 271 investigation. Indeed, SBC took the position in that docket, and the Commission agreed, that the Section 271

proceeding was "not set up to adjudicate the rights of any parties." See Order dated May 13, 2003, par. 44. As this Commission was well aware, the purpose of that docket was not to conduct a detailed analysis of SBC's line splitting obligations but whether SBC's offerings were sufficient to satisfy the Section 271 checklist items in order to obtain long distance authority. In fact, this is confirmed by the May 13, 2003 Final Order at par. 1721:

> Based on the record, we find that SBC Illinois has made the requisite showings as directed by the Phase I Order. We are particularly persuaded by the fact that SBC Illinois uses the same line sharing/line splitting processes used in California which were reviewed by the FCC in the California 271 Application and found to comply with Section 271 requirements.

AT&T invites the Commission to review the paragraphs of the Docket 01-0662 Order in question (par. 1580-1611 and 1721-1726) because the Commission will see that not once in those paragraphs – or, for that matter, any other paragraphs – did the Commission conclude, as SBC contends it has, that "SBC Illinois is not required to, and indeed cannot, provide line splitting as a 'UNE platform.'" (SBC Init. Br., pp. 101-102) The only specific language SBC references is language in paragraph 1599, and that language merely provides that the loop needs to temporarily disconnected from the switch in order to insert a splitter. Certainly that is the case in going from voice service over a loop to voice and data service over a loop, but once the splitter is inserted, the same loop and the same port that form the UNE-Platform (assuming UNE-P voice service) are simply reconnected. This is not factually different from line splitting as addressed by the FCC or by the state commissions in Michigan, Indiana, Ohio and Wisconsin, yet of all these commissions have determined that the respective ILEC must provide line splitting using the UNE-Platform. In fact, several of these commissions have rejected SBC's position based on the very same testimony submitted by Ms. Chapman and Mr. Odle in this proceeding. (See AT&T Init. Br., pp. 122-127)

AT&T's ability to engage in line splitting using the UNE-Platform is crucial to its ability to offer combined voice and data services to compete with SBC. The FCC has required SBC to provide line splitting over the UNE-Platform and SBC is required to provide line splitting using UNE-P in every other state in the SBC-Midwest region. In addition, Section 13-801(d)(6) and the Commission's Order in Docket 01-0614 are very clear that when an end user migrates its SBC services to UNE combinations and no field work is required, that migration shall occur "without any disruption to the end user's services." (See AT&T Init. Br., pp. 99-100) Accordingly, AT&T's proposed language for UNE Issue 8(a) should be adopted.

UNE Issue 9(a): May AT&T combine UNEs with other services (including access services) obtained from SBC-Illinois?

AT&T agrees with and accepts Staff's proposed language at pages 55-56 of Staff's Initial Brief to resolve Issue 9(a). AT&T certainly agrees to abide by the FCC's *Supplemental Order Clarification*, as required by the Commission in Docket 01-0614. As AT&T discussed in its Initial Brief, SBC's proposed language provides for additional limitations and restrictions on AT&T's use of UNEs in addition to those ordered by the Commission. SBC's language therefore violates Section 13-801(a) of the Illinois Public Utilities Act, which allows AT&T to use SBC-provided network elements "in any manner technically feasible to the fullest extent possible to implement the maximum development of competitive telecommunications offerings." (See AT&T Init. Br., pp. 101-103) Accordingly, Staff's proposed language should be adopted.

AT&T has agreed to withdraw the language that formed the basis for Issue 9(b).

UNE ISSUES CONCERNING LIMITATIONS ON COMBINATIONS

UNE Issue 10:

SBC Issue: Should the ICA contain the limitations on an ILEC's obligation to combine which are set forth in V*erizon Comm. Inc.*?

AT&T Issue: Is SBC Ameritech obligated to combine requested network elements for AT&T?

UNE Issue 14: Whether the ICA should include language stating that SBC-AMERITECH may reserve the right to incorporate subsequent regulatory, judicial or legislative orders that address UNEs and/or the obligation to provide combinations of UNEs, in addition to the change of law provisions covered in Article 29, section 29.4?

UNE Issue 15:

SBC Issue: Under what circumstances is a CLEC able to combine for itself?

AT&T Issue: Is SBC-Ameritech required to combine UNEs that are ordinarily combined?

These three UNE issues are closely related in that all involve an attempt by SBC Illinois to insert limitations on, or caveats to, its obligation to provide combinations of UNEs based on SBC's construction of the Supreme Court's decision in *Verizon*. SBC Illinois' proposed limitations and conditions, however, are inconsistent with its obligations under the Telecommunications Act as interpreted by the FCC and the Supreme Court as well as its state law obligations set forth in Section 13-801 of the Illinois Public Utilities Act and as construed by this Commission.

SBC Illinois' proposals are a continuation of its campaign to do away with, or undermine the competitive feasibility of, the UNE Platform. Its efforts go back to the passage of the 1996 Act and run through its attack on "shared transport," SBC's wrongful (and since-sanctioned) implementation of its merger commitment to make that UNE available in the former Ameritech region, and of course its most recent attempts to re-price UNE-P so as to make its use economically infeasible to CLECs. SBC Illinois' ICA proposals amount to a series of "poison

pills" that it could invoke against UNE-P in the future, and they should be definitively rejected by the Commission.

AT&T points out, first of all, that Section 9.3.3 as proposed by AT&T expressly includes two of the limitations SBC Illinois separately wishes to incorporate. These two longstanding FCC conditions are (1) that the requested combination is "technically feasible," and (2) that it "would not impair the ability of other Telecommunications Carriers to obtain access to Network on an unbundled basis or to Interconnect with SBC-AMERITECH's network." These provisions appear in FCC Rule 315(c), and they therefore appear in AT&T's proposed language.

In addition, however, Ameritech seeks, in its proposed Section 9.3.3.9 (and subsections) to insert caveats that the requesting CLEC must be "unable to make the combination itself" (Sec. 9.3.3.5.1) or "unaware" that such combination is necessary (Sec. 9.3.3.9.5.2).[19] Under SBC's proposal, the latter condition would be removed if SBC gives notice of denial of the requested combination (and hence it could deny the combination); the larger point, however, is that making a CLEC "aware" of the need for a combination would not mean that a CLEC is no longer "unable" to make the combination. Hence, the principal issue is whether SBC should be permitted to insert its "unable to combine" restriction in the ICA.[20]

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[19] SBC Illinois also proposes other restrictions: Sec. 9.3.3.9.2 (that the combination request not "impair" SBC Illinois' ability to retain responsibility for the management, control and performance of its network") and Sec. 9.3.3.9.2 (that SBC "not be placed at a disadvantage in operating its own network") are, as SBC admits, nowhere to be found in *Verizon*; they are, moreover, unnecessary as well as exceedingly vague, and their inclusion here as a condition to SBC's UNE combination obligations can only inject ambiguity and the risk that SBC will invoke them in unpredictable ways to deny combination requests and force AT&T to litigate in order to secure combinations to which it is entitled.

[20] This question is at the heart of both of UNE Issue 10 as well as UNE Issue 15, where SBC takes the position that the existence of collocation facilities in a central office means that the CLEC is not "unable" to perform the combination.

As noted above, SBC Illinois' position on these issues ostensibly relies on the Supreme Court's decision in *Verizon*. Such reliance is misplaced, however. Most importantly, AT&T's proposed version of Section 9.3.3 is *taken directly from FCC Rule 51.315(c)*. As SBC Illinois discusses in its Initial Brief, the US Court of Appeals for the Eighth Circuit in *Iowa Utils. Bd. v. FCC*, 219 F3d 744, 759 (8th Cir. 2000) had held that the FCC rules requiring incumbent carriers to combine unbundled network elements for competing carriers were unlawful, and it had vacated those rules. In *Verizon*, the United States Supreme Court reversed the Eighth Circuit and reinstated the FCC rules requiring incumbent LECs to make "additional" combinations for CLECs, including Rule 315(c).

SBC Illinois now attempts to parlay the Supreme Court's discussion of combinations issues at various points into restrictions on its unbundling/combining obligations that must be set forth in the text of the interconnection agreement in order for the ICA to conform to the requirements of the Act. (SBC Init. Br., pp. 105 et seq.) The short answer is that *Verizon* found that the Eighth's Circuit's reading of the Act's unbundling requirements was fundamentally wrong, and the holding of *Verizon* was that the rule – Rule 51.315(c), which provides the text for AT&T's proposed Section 9.3.3 – should be reinstated. If, as SBC Illinois contends, the Act had required the imposition of limitations that were not reflected in this Rule, the Supreme Court would have had to vacate Rule 51.315(c) and direct that it be modified. It did not do so, and the Commission should not impose such requirements and restrictions here.[21]

[21] SBC refers to litigation over this issue in "federal court," in which it prevailed at the district court level, and asserts that the Commission here should "follow that federal court precedent." (SBC Init. Br., p. 105) The case in question was in federal district court in Indiana, which is not binding on this Commission. AT&T has appealed that decision as erroneous as a matter of federal law, and of course the state law basis underlying the Indiana Commission's action is distinct from the law in Illinois, discussed below.

Moreover, SBC Illinois ignores the FCC's underlying analysis in adopting Rule 315(c), as well as the Supreme Court's reading of it. The effect of SBC's proposed provision would be require a determination – and potential litigation – over whether AT&T is "able" to make the combination in question on a case by case basis, i.e., potentially with each requested combination. There is nothing in the FCC's Rule 315(c) that remotely implies that a case-by-case showing or determination of AT&T's ability to combine the elements in question should be conducted. And that is because in 1996 the FCC made the *generic* finding that CLECs are incapable of combining elements of the incumbent's network at costs that are remotely comparable to those the incumbent incurs – and therefore that the best way to achieve the Telecommunications Act's goals is simply to require ILECs to make these combinations when CLECs request them. Put differently, even if it is absolutely true that an ILEC need not combine elements if the CLEC can do so, the FCC categorically determined when it promulgated Rule 315(c) that, "given the[] practical difficulties of requiring requesting carriers to combine elements that are part of the incumbent's network, . . . section 251(c)(3) should be read to require incumbent LECs to combine elements requested by carriers." *Local Competition Order* par. 294. Indeed, as *Verizon* itself states (535 U.S. at 532), the FCC reaffirmed this finding in 1999, when it determined that incumbents uniformly denied entrants with the physical access to the incumbents' networks that would be required to combine elements. *UNE Remand Order*, par. 482 & n.973. In *Verizon*, the Supreme Court thus affirmed and reinstated the FCC combinations rules notwithstanding the absence of a condition limiting them to instances where CLECs are shown to be unable to perform the combinations. It did so on the ground that "[t]here is no dispute that the incumbent could make the combination more efficiently than the entrant." *Verizon*, 535 U.S. at 538.

Furthermore, even if the FCC's *rules* required AT&T's actual inability to make combinations, which they do not, it does not follow that the ICC is required to include that condition in an *interconnection agreement* and potentially generate "case-by-case" litigation over this question every time AT&T requests a combination. Under the federal Act, the FCC's rules serve to "guide the state commission's participation in the federal scheme" (*AT&T*, 525 U.S. at 379 n.6), and the states' role under the Act is to "*implement* the general nondiscrimination rules" of the FCC by "adopting" the "specific rules" that will establish "the conditions they deem necessary to provide new entrants . . . with a meaningful opportunity to compete in local exchange markets." *Local Competition Order*, par. 310.

The state law basis in Illinois for requiring combinations free of such limitations could not be more clear. As discussed in AT&T's Initial Brief, the Commission has ordered SBC to provide CLECs with all network element combinations that it ordinarily combines for its own use or the use of its end user customers, including UNE-P combinations used to serve new lines and additional (or second) lines, and it did so without an "unable to combine" restriction of any kind. Order in Docket 98-0396 (October 16, 2001), see AT&T Init. Br., pp. 106-08. It did so under state as well as federal law. Id. Moreover, the Illinois General Assembly in enacting Section 13-801(d) of the Illinois Public Utilities Act required SBC Illinois to provide "to any requesting telecommunications carrier, for the provision of an existing or a new telecommunications service, nondiscriminatory access to network elements on *any unbundled or bundled basis*, as requested. . . ." (Emphasis supplied.) SBC Illinois' proposed limitations, and in the particular the "unable to combine" restriction, are directly inconsistent with the requirements of Illinois law.

Again, SBC Illinois' proposal would insert in the interconnection agreement conditions that would allow it to deny requests for UNE combinations virtually on a "case by case" basis, meaning that AT&T could be forced to litigate its entitlement combinations literally one at a time. SBC has "strong incentives" to impose artificial costs and delays on competitors, and a provision requiring such individual determinations would give Ameritech a right to delay AT&T's access to essential and other facilities needed to compete and to impose litigation and other costs on AT&T that Ameritech does not incur. See *Local Competition Order*, par. 41, 55-56, 307-10 (because incumbents have "strong incentives to resist" their obligations under the Act, the FCC's minimum rules are intended to provide "interpretations of the law that might not otherwise emerge until after years of litigation" and to "reduc[e] administrative burdens and litigation" and the attendant costs on entrants). SBC's ICA proposals in this regard are entirely unworkable, and if accepted would erect the barriers to entry that the 1996 Act and Section 801 of the Public Utilities Act were designed to end.

Accordingly, SBC's contract proposals should be rejected and AT&T's accepted. Staff is in agreement with AT&T. (Staff Init. Br., pp. 55-56)

UNE Issue 14 involves SBC Illinois' contention that the *Verizon* decision rests on a distinction between performing "the functions necessary to combine" network elements and completing the actual combination. Its language states that SBC Illinois is willing, notwithstanding the *Verizon* distinction, to complete the actual combinations, but further states that SBC Illinois is not waiving its right to seek legal review of any decision regarding its combination obligations. Anticipating AT&T's position is that such a provision is entirely unnecessary, SBC contends that it should be allowed the "comfort" of including such non-waiver language in the agreement. But beyond this rather frivolous point, SBC proposes that in the

event of regulatory, judicial or legislative "clarification" concerning what functions are required (and what are not required), SBC Illinois will be relieved of any non-necessary obligations immediately – without regard to the change of law provisions of the agreement.

SBC Illinois suggests two reasons for special change of law treatment of this issue. First, SBC predicts that AT&T would assert that such regulatory, etc. decision would not constitute a change in law and would thus frustrate SBC's effort to invoke the change in law provision. Second, SBC Illinois contends that because it is agreeing not to insist on limiting its obligation to performing only the functions "necessary to combine," it should enjoy automatic or expedited invocation of change provisions. As to the first, AT&T would view any purported removal of the obligation to actually complete UNE combinations to be a significant change in law. Certainly it would be a marked change in the industry practice both before and after *Verizon*. Moreover, even if AT&T were to disagree on that point, SBC Illinois undoubtedly could invoke the Commission's dispute procedures, and secure the Commission's determination one way or the other. And on the second argument, of course, we disagree fundamentally that SBC Illinois is "foregoing" the pursuit of a valid, unambiguous and enforceable position at this point. Indeed, SBC Illinois concedes as much by couching the "triggering" event as a "clarification" of its obligations. In short, SBC's proposal is unnecessary and ill-advised.

Finally, in connection with **UNE Issue 15**, SBC has elaborated on its "unable to combine" position by proposed language to the effect that if AT&T is collocated at an end office, it will be deemed "able" to perform the combination itself and SBC Illinois will not be obligated to do so. SBC's proposed 9.3.2.2, which is not by its terms limited to "new" UNE combinations, provides that if AT&T is collocated "it must combine the elements for itself and SBC is not

required to combine for AT&T." Section 9.3.3.9.5.3 would have like effect in the case of "new" (i.e., not "pre-existing," in SBC's terminology) combinations.[22]

These provisions, if adopted, would allow SBC Illinois to completely undermine the core requirement of Section 9.3.1 that SBC provide UNE combinations to AT&T that it "ordinarily combines" for itself or its end users. As AT&T showed in its Initial Brief, SBC's proposals fly in the face of the Commission's clear and definitive orders to the contrary in Docket 98-0396 and Docket 01-0614, and the statutory mandate of Section 13-801 of the Public Utilities Act, all of which require SBC to provide all network element combinations that it "ordinarily" combines for itself, and without regard to whether AT&T is collocated. As the Supreme Court said in *Verizon*, the requirements of FCC Rule 315(c) promote the Telecommunications Act's "goals of competition" and "nondiscrimination" in access to network elements. Indeed, the Court observed that to the extent the Rule "raises a duty to combine what is ordinarily combined," it "neatly complements" the duty to provide existing combinations. It is only if ILECs are required categorically to provide combinations that they "ordinarily combine" for themselves and their end users that the core nondiscrimination standard of Section 251(c) can be said to have been met.

The collocation caveat generally, moreover, is a construct invented by SBC Illinois out of whole cloth. There is nothing in the FCC's rules, not to mention in *Verizon*, to support SBC's position. As pointed out in AT&T's Initial Brief, for AT&T to physically combine elements in collocation space in an SBC central office only increases AT&T's costs and needlessly increases

[22] At certain points in its brief SBC Illinois states or at least implies that its proposed limitation applies to "new" combinations alone. That is bad enough, in view of the Commission's (not to mention the General Assembly's) requirement that it provide "new" as well as "existing" combinations. SBC's proposed Section 9.3.2, however, is not by its terms limited to "new" combinations, and so could be read to undermine SBC's obligations even with respect to existing combinations.

the risk of service outages or degradation to the customer; indeed, there is no justification for a collocation requirement except to impose excessive costs on new entrants, to the detriment of competition.[23] For all of the reasons set forth above, this restriction is contrary to the requirements of federal as well as state law, and it should be rejected by the Commission in all of its guises.

AT&T's contract proposals for Section 9.3.3 should be adopted and SBC Illinois' additional limitations (e.g., 9.3.3.9 and subsections, and 9.3.3.11) should be rejected. Staff is in agreement with AT&T. (Staff Init. Br., p. 63) The Commission should adopt AT&T's proposed language for UNE Issues 10, 14 and 15 and should reject SBC Illinois' proposals.

<u>UNE Issue 11(a)</u>: Should the ICA contain language specifically obligating AT&T to follow the FCC's Supplemental Order Clarification when utilizing EELs or does the Parties agreed to language in section 9.1.1 adequately describe AT&T's obligations?

<u>UNE Issue 11(b)</u>: Is SBC-Ameritech required to combine UNEs with non 251(c)(3) offerings?

SBC's proposed Section 9.3.3.14.1 essentially provides that AT&T must comply with the restrictions set forth in the FCC's *Supplemental Order Clarification* when AT&T purchases and SBC provides an EEL combination consisting of an unbundled loop and unbundled dedicated transport. This issue is essentially the same issue presented in UNE Issue 3 because the restrictions and limitations contained in the FCC's *Supplemental Order Clarification* only apply to EEL combinations consisting of a loop/transport combination. Thus, while AT&T agrees with Staff that SBC's proposed language limits AT&T's right to use an EEL combination as provided in the FCC's *Supplemental Order Clarification* (Staff Init. Br., p. 58), the language the

[23] Further, SBC's position renders it more inefficient to add services or products such as DSL over UNE-P. (AT&T Init. Br., pp. 132-33)

Commission adopts in UNE Issue 3 will also resolve this issue. Accordingly, SBC's Section 9.3.3.14.1 should be stricken.

AT&T agrees with Staff that SBC's proposed Section 9.3.3.14.2 should be rejected because it imposes restrictions and limitations on AT&T's use of network elements that exceed the limitations set forth in the FCC's *Supplemental Order Clarification.* (Staff Init. Br., p. 58) SBC's proposal would therefore violate Section 13-801(a) of the Illinois Public Utilities Act, which provides that AT&T shall be able to use those network elements "to the fullest extent possible to implement the maximum development of competitive telecommunications services offerings." See Section 13-801(a).

With respect to UNE Issue 11(b), Staff proposed minor revisions to AT&T's proposed Section 9.3.3. Staff recommends that the reference in Section 9.3.3 to elements that are not ordinarily combined be eliminated but that AT&T's proposed language remain intact in nearly all other respects. With all due respect to Staff, AT&T's language tracks the language of FCC Rule 315(c) and (d), as AT&T pointed out in its Initial Brief. See 47 C.F.R. § 51.315(c) and (d). FCC Rule 315(c) provides:

> (c) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, provided that such combination is:
>
> (1) technically feasible; and
>
> (2) Would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.
>
> (d) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements with elements possessed by the requesting telecommunications carrier in any technically feasible manner.

Accordingly, AT&T's proposed language should be adopted.

UNE Issue 12:

SBC-Illinois Issue: Is SBC entitled to compensation for work performed to combine UNEs as set forth in V*erizon Comm., Inc.*?

AT&T Issue: Should SBC be permitted to charge a "glue" charge when SBC combines UNEs?

AT&T has objected to SBC's proposed language for Sections 9.3.3.8 and 9.3.3.12 on the ground that AT&T is concerned that SBC will use this language to attempt to impose a "glue charge" on AT&T in Illinois as SBC has attempted to impose in other of its states. The "glue charge" SBC has attempted to impose in other states is not the TELRIC-based nonrecurring charge(s) SBC is entitled to for combining network elements for CLECs, but is *in addition to* the TELRIC-based nonrecurring charges for combining network elements. AT&T has also objected to SBC's proposed language to the extent the issue as SBC frames it implies that the *Verizon* case somehow modified the FCC's rules on combinations and how charges for combining elements ought be assessed. As AT&T stated in its Initial Brief, the *Verizon* decision simply reinstated FCC Rule 315(c); it did not revise or modify the FCC's unbundling rules or TELRIC methodology. Thus, the *Verizon* decision did not decide anything new or different regarding SBC's combining obligations, the work required to combine them or the costs it can recover for such work. AT&T agrees with Staff that the *Verizon* language upon which SBC bases its positions is *dicta* that does not impose new obligations but merely recites obligations imposed by the FCC. (See Staff Init. Br., p. 57)

AT&T agrees with Staff that SBC is entitled to be compensated for combining network elements, that such nonrecurring charges must comply with the FCC's TELRIC methodology, and that SBC is only entitled to assess charges that comply with the TELRIC methodology, and

nothing more. (Staff Init. Br., pp. 60-61) AT&T also agrees with both SBC and Staff that AT&T and SBC have agreed to use the BFR-OC process to request a network element combination that SBC "ordinarily combines" but that it has not tariffed. SBC contends the BFR-OC process set forth in Schedule 2.2 applies and Staff contends the BFR-OC process contained in SBC tariff Ill. C.C. No. 20, Part 19, Section 1 applies. The tariffed process and the process contained in Schedule 2.2 are identical.

To the extent the Commission adopts Staff's proposed language and makes clear that the charges it may assess for combining network elements must comply with the FCC's TELRIC methodology, AT&T recommends that all references to Time and Material charges be modified to ensure that all Time and Material charges comply with the FCC's TELRIC methodology. Time and Material charges may be TELRIC-based, and they may not. AT&T has challenged SBC's Time estimates and Material estimates in numerous cost proceedings on the basis that the Time and Material estimates are not forward looking, least cost and/or most efficient. There is no need to specifically reference Time and Material charges; requiring that any charges be TELRIC-compliant is sufficient. In that way, to the extent Time and Material costs are TELRIC-compliant, they will be included, and to the extent Time and Material costs are not TELRIC-compliant, they will be excluded. If, however, the Commission adopts any reference to Time and Material charges, the Commission must insert the phrase "TELRIC-based" or "TELRIC-compliant" to make clear that the Time and Material charges SBC assesses must comply with the FCC's TELRIC methodology.

<u>UNE Issue 13</u>: Should the ICA contain terms and conditions relative to "pre-existing" and new combinations as proposed by SBC-Illinois?

By this issue, SBC claims it is only attempting to distinguish between new and pre-existing combinations for purposes of pricing. (SBC Init. Br., p. 117) That is simply not true. As AT&T fully explained in its Initial Brief, the true intent behind SBC's language is to narrowly define pre-existing combinations so that SBC can either refuse to combine them or charge AT&T an exorbitant fee for combining them.

SBC's intentions are not a matter of conjecture. In fact, SBC has consistently claimed that the definition of "pre-existing" combinations does not include instances in which the loop facility is being used to provide both voice and DSL service (e.g., in line sharing or line splitting arrangements). This position would preclude the use of UNE-P when line splitting is ordered on a line so that a CLEC to provide a combined voice/DSL offering to the customer. It would also preclude the ordering of UNE-P on currently line-shared lines.

Applicable law is contrary to SBC's position. Section 13-801(d)(3) requires that SBC combine elements that it "ordinarily combines for itself." And this Commission has interpreted that language as requiring SBC to provide combinations "used or functionally equivalent to that used by the Company or the Company's end users." (Order, Docket 01-0614, p. 56.) Clearly, SBC offers combined DSL/voice services to its own customers in network arrangements identical to line splitting and line sharing.

SBC takes the position that UNE-P cannot exist with line splitting. That is simply not the case. The FCC has made clear that SBC must provision line splitting "using the UNE-

platform."[24] Moreover, every state in the former Ameritech region has affirmed AT&T's right to provide DSL services via line splitting while providing voice services using the UNE Platform.[25]

SBC's proposed language has important and negative practical affects. For example, in reliance on its position – that there is no UNE-P with line splitting – SBC attempts to force AT&T to order a new "xDSL" loop and switch port each time AT&T seeks to add DSL service to a UNE-P customer's pre-existing voice line, thereby necessitating disconnection and potential telephone number assignment (See SBC's proposed contract language and position statement for Issues 8(a) and 8(b)). Based on the same set of arguments here, SBC argues that when dropping the DSL portion of a customer's service, a CLEC cannot re-use the existing loop to continue to provide voice services via UNE-P. Instead, according to SBC, the CLEC is provisioned a new loop.

This position ignores the fact that in both cases there is a "pre-existing" working loop that can and should be used to provide the CLEC voice and/or DSL service(s). SBC's position also ignores that in both cases there is a pre-existing port that should continue to be used to support the UNE-P customer's voice service. SBC's position also flies in the face of the CLECs' right to use all the features and capabilities of the loop it orders from SBC. Finally, this policy is discriminatory because SBC does not require the same for its own retail voice customers that seek to add or cancel data service on an existing SBC phone line. For its retail customers, SBC either (1) treats that line as existing and provisions new DSL service over it, or (2) disconnects the DSL service and continues to provide voice services over the existing loop and port.

[24] See numerous FCC citations at page 123 of AT&T's Initial Brief.

[25] Id.

UNE-P with line splitting arrangements are not "new" in the sense that they do not always require the use of a new loop and port. It is true that in some cases, in order to provision a UNE-P service, SBC must provision a new loop and assign a new switch port (and phone number) to that loop. However, a CLEC can order UNE-P with line splitting on an *existing* SBC retail loop with an already assigned port and phone number. In that case, all SBC has to do to provision line splitting on a pre-existing combination is to cross connect the high frequency portion of the loop to the CLEC cage in order for it to be split. The loop is then cross connected back to the already existing and working switch port. That is all that is required to provide "line splitting" with UNE-P. In that arrangement, the CLEC continues to utilize the pre-existing customer loop and switch combination for voice purposes. As the FCC and every state commission in this region has concluded, there is no reason that this combination should be viewed any different than any other UNE-P combination. Yet SBC's proposed language attempts to lump this UNE-P/line splitting combination into a category of "new" combinations, which SBC restrictively defines.

Finally, SBC is also wrong in arguing that line sharing to UNE-P/line splitting conversions must somehow change the pre-existing combination of SBC Illinois provided network elements. (SBC Init. Br., p. 120) As the FCC has found, the conversion of line sharing to line splitting, where the data CLEC remains the same, should be accomplished via a simple record change. Because "no central office wiring changes are necessary" in a conversion from line sharing to line splitting, the FCC made clear its expectation that ILECs should work with CLECs "to develop streamlined ordering processes for migrations between line sharing and line splitting that avoid voice and data service disruption and make use of the existing xDSL-capable loop." *Line Sharing Reconsideration Order*, at par. 22. SBC's language ignores this fact by

arguing that this migration "could not . . . be considered a pre-existing combination." That is simply wrong.

In fact, in other venues, SBC is seeking to charge for this migration nonrecurring charges ("NRCs") associated with port and loop service order charges and the disconnection of the HPFL. SBC would normally charge these NRCs when provisioning a new standalone loop or port. Contrary to SBC's proposed language, that is not the case here, as there is a working loop and port that is simply being converted (on a record basis) from line sharing to line splitting. Moreover, there is no physical disconnection of any facility, including the HFPL. No physical work needs to be done to accomplish this migration where there is no change in data carrier. During the Michigan 271 review, the Michigan Commission directed SBC to charge the UNE-P migration charge for line sharing to line splitting migrations, reflecting the fact that such migrations are pure record changes. [26] This Commission should recognize the same and reject SBC's language.

In sum, the Commission should reject SBC Illinois' proposed language for Section 9.3.2.1 and 9.3.2.2 of the new ICA and ensure that SBC will be obligated to provide the UNE-P/line splitting, and the UNE-P/post-line splitting arrangements are treated as UNE-P, i.e., ordered as UNE-P, maintained as UNE-P, tested as UNE-P, repaired as UNE-P and charged as UNE-P. The Commission should further reject SBC Illinois' language for Section 9.3.3.1 of the ICA which would allow SBC Illinois to deem line splitting a "new combination" which could be refused, or charged at exorbitant rates.

[26] October 3, 2002 Opinion and Order, MSPC Case No. U012320, p. 16.

<u>UNE Issue 16</u>: Does UNE-P include operator service, directory assistance, tandem switching and call-related data bases?

The first sentence of AT&T's proposed language simply acknowledges the fact that the combination of network elements commonly known and referred to in the industry as the UNE-Platform is merely a subset of the more expansive and generic array of "network element platforms" to which AT&T is entitled under Section 13-801(d)(4) of the Illinois Public Utilities Act:

> A telecommunications carrier may use a network elements platform consisting solely of combined network elements of the incumbent local exchange carrier to provide end to end telecommunications service for the provision of existing and new local exchange, interexchange that includes local, local toll, and intraLATA toll, and exchange access telecommunications services within the LATA to its end users or payphone service provides without the requesting telecommunications carrier's provision or use of any other facilities or functionalities.

Neither SBC nor Staff disagree with this substantive language.

SBC takes issue with the second and third sentences of AT&T's proposed language regarding the definition of the UNE-Platform, however. In its Initial Brief, AT&T proposed the following revised language clarifying its original proposal. Based on the initial briefs filed by SBC and Staff, AT&T's revised language, restated below, satisfies the concerns they raise concerning the breadth of AT&T's originally proposed language:

> The UNE-Platform shall consist of the NID, the loop, local switching, <u>and</u> shared transport <u>and shall include access to</u> signaling and call-related databases. The UNE-Platform may also ~~include~~ <u>be used in conjunction with</u> tandem switching and OS and DA (either provided by SBC Illinois or via customized routing by which SBC Illinois routes AT&T's OS and DA traffic to AT&T's OS/DA platform or the OS/DA platform of a third party).

AT&T agrees with SBC that the first sentence of AT&T's proposed Section 9.3.1.3.4 should include a reference to the federal Act and the FCC rules, and was omitted in error. As such, AT&T agrees that the first sentence of that Section should be revised as follows:

> SBC Illinois shall not place any restrictions or limitations on AT&T's use of the UNE-Platform other than those restrictions and limitations provided for by the Federal Telecommunications Act, the rules and regulations of the Federal Communications Commission and the Illinois Public Utilities Act and applicable state laws, rules, orders and regulations.

UNE Issue 17:

> **SBC Issue: Should the Agreement state that SBC will follow OBV EMI guidelines rather than stating the specific detail that may be included in such guidelines, when such detail is subject to change by the OBF forum during the term of the Agreement?**
>
> **AT&T Issue: Should the Agreement specify key elements of the OBF EMI guideline requirements related to SBC-AMERITECH's obligations to provide records to AT&T when AT&T is relying on SBC-AMERITECH to bill its end users?**

Staff agrees with AT&T that SBC should be required to provide to AT&T, at no charge, the originating carrier Operating Company Number ("OCN") for all calls terminated by AT&T as a UNE-based provider using unbundled switching leased from SBC. Staff correctly concludes that SBC did not substantiate its claims that other sources of this information are available to AT&T at reasonable cost. (Staff Init. Br., pp. 65-66)

Staff disagrees with other aspects of AT&T's position and proposed contract language. Staff proposes the following language for Section 9.3.1.3.1 (Staff Init. Br., pp. 66-67):

> In accordance with Section 9.2.2.4.4 of Schedule 9.2.7 "Interoffice Transmission Facilities" and Article 27.14.4 of Article 27 "Comprehensive Billing", SBC Illinois will provide the records to AT&T in OBF EMI format and retain these records for one year. The OCN number will be included in the EMI record according to commonly accepted industry standards.[27]

AT&T has several comments on Staff's proposed language. First, the words "commonly accepted" before "industry standards" are redundant and unnecessary. AT&T had proposed that

[27]Staff states that its position also applies to UNE Issue 27 and Comprehensive Billing Issues 4 and 5. (Staff Init. Br., p. 66) AT&T assumes Staff means UNE Issue 28, not UNE Issue 27.

the word "current" appear before "industry standards." SBC had expressed concern that AT&T's originally proposed language would require SBC to be "locked in" to the current OBF format and thus not be able to make future modifications to conform to future changes in OBF standards (SBC Init. Br., pp. 132-33), a concern that Staff shared (Staff Init. Br., p. 66). While that was not the intent of AT&T's original language (nor, we believe, the effect), AT&T suggests that simply using the phrase "according to industry standards" will help alleviate further concerns over this point.

Second, as AT&T discussed in its Initial Brief on this issue, the contract language needs to provide what happens if SBC fails to provide the OCN information to AT&T. (AT&T Init. Br., p. 139) Consistent with its recommended language for UNE Issue 27 and Comprehensive Billing Issue 4 (which are essentially the same issue as UNE Issue 17), AT&T proposes that the following sentence be added to Staff's proposed language: "Any records received without the originating OCN will be treated as though originated by SBC-Illinois in accordance with the terms of Schedule 9.2.7 of this Agreement."

In summary, AT&T would accept the following modified version of Staff's proposed language to resolve UNE Issue 17:

> In accordance with Section 9.2.2.4.4 of Schedule 9.2.7 "Interoffice Transmission Facilities" and Article 27.14.4 of Article 27 "Comprehensive Billing", SBC Illinois will provide the records to AT&T in OBF EMI format and retain these records for one year. The OCN will be included in the EMI record in accordance with industry standards. Any records received without the originating OCN will be treated as though originated by SBC-Illinois in accordance with the terms of Schedule 9.2.7 of this Agreement.

In addition, AT&T notes that it previously stated that it was willing to include the phrase "with an effective date targeted for the 1st quarter 2004" after "EMI record" in the second sentence above, in recognition of implementation of SBC's ULS Port OCN Project. (See AT&T Init. Br., pp. 138-39)

UNE Issue 18a: Should AT&T and its HBSS be required to be on the same LSOG version?

> **SBC's Issue Statement: Whether SBC is obligated to modify its OSS to accommodate AT&T and its third party agent and their inter-CLEC communication to enable the HBSS to place orders on AT&T's behalf for Line Splitting?**

SBC argues that AT&T's position on this issue is foreclosed because the Commission determined in Docket 01-0662 that SBC Illinois provides nondiscriminatory access to its OSS. (SBC Init. Br., p. 135) The fact that the Commission concluded that SBC Illinois met this particular Section 271 checklist item at a particular point in time certainly does not foreclose any future complaints by CLECs, or findings by the Commission, that SBC is failing to provide nondiscriminatory access to its OSS in specific respects.[28] Here, AT&T has pointed out that SBC's "same version" policy is discriminatory and anticompetitive **because it does not apply to SBC Illinois, its data affiliate or any unaffiliated High Bandwidth Service Supplier ("HBSS") with which SBC may partner** – these entities can submit combined voice and data orders into SBC Illinois' OSS without being required to use the same LSOG version. (AT&T Init. Br., pp. 145-46) SBC fails to even mention, let alone dispute, this fact in its Initial Brief.[29]

SBC also argues that in Docket 01-0662, "AT&T raised the very argument it is raising here" but that "The Commission rejected this argument." (SBC Init. Br., p. 135) SBC

[28]Indeed, the Commission recognized that in the future SBC could be in non-compliance with the requirements of the Section 271 competitive checklist but that the Commission would have tools at its disposal to address such non-compliance, including informing the FCC of such deficiencies for possible action pursuant to Section 271(d)(6) of the Telecommunications Act (i.e., suspension or withdrawal of authority to provide long distance service). (Docket 01-0662, Final Order on Investigation (May 13, 2003), par. 3609).

[29]Staff acknowledges that "CLECs who provide data under a line sharing arrangement with SBCI are not required to be on the same LSOG version as SBCI" (Staff Init. Br., p. 67), but Staff fails to display any cognizance of the discriminatory and anticompetitive consequences of this fact.

mischaracterizes the Docket 01-0662 Order. In response to this issue, which was first raised by AT&T and WorldCom in Phase 2 of Docket 01-0662, the Commission stated: "As we see it, this issue is of recent vintage and the Commission believes that it does not stand in the way of finding overall compliance with checklist item 4."[30] SBC further asserts that "in 271 proceedings state commissions and the FCC have found that SBC provides nondiscriminatory access to its OSS in seven other states where SBC does not support the "versioning" that AT&T requests." (SBC Init. Br., p. 135) However, although SBC lists seven states (none of which are in the Midwest region), it provides no citations to FCC orders, state commission orders or the record of this case to substantiate its assertion, nor does it provide any citations to show, or even claim, that the "same version" policy was even raised as an issue in Section 271 proceedings for those other states.

SBC next argues that "OSS issues are particularly ill-suited for arbitration." (SBC Init. Br., p. 135) This is a rather bizarre claim. Section 251(c)(3) of the Telecommunications Act (47 U.S.C. § 251(c)(3)) requires an ILEC (such as SBC Illinois) to provide to a requesting carrier (such as AT&T) nondiscriminatory access to unbundled network elements, one of which is the ILEC's OSS. Section 252(b)(4)(C) of the Telecommunications Act (47 U.S.C. § 252(b)(4)(C)) requires the state commission, in an interconnection agreement arbitration, to "resolve each issue set forth in the petition and the response," and Section 252(c)(1) specifies that in resolving the open issues in an arbitration, the state commission shall "ensure that such resolution and conditions meet the requirements of section 251". (47 U.S.C. § 252(c)(1)) SBC's basis for its assertion is that OSS issues should be resolved in industry-wide forums rather than in a two-party arbitration. AT&T points out in this regard that, as indicated in the portion of the Docket

[30]Docket 01-0662, Final Order on Investigation (May 13, 2003), par. 1726.

01-0662 order cited by SBC, both AT&T and WorldCom – the two CLECs serving the largest numbers of customers in Illinois – have objected to SBC's "same version" restrictions. Thus, by definition, SBC's "same version" policy has already been identified as objectionable by a substantial segment of the CLEC industry, based on number of customers served.

SBC also claims that there are alternatives available to AT&T and its HBSS partner, Covad. AT&T described in its Initial Brief (p. 146) why three of those alternatives are not viable, and why they would impair AT&T's and its HBSS partner's ability to compete effectively with SBC in the combined provision of voice and data services. (Staff agrees that these alternatives are costlier and more error-prone that EDI-based ordering, which SBC's "same version" policy precludes. (Staff Init. Br., p. 67)) As to the fourth alternative, the "LSPAUTH", it is not in place at this time. AT&T agrees with SBC that LSPAUTH "appears" promising, but at this time it is only a concept (the proposal having been presented to the CLEC community on May 29, 2003), and SBC's target date of March 2004 does not meet AT&T's business needs. (Tr. 263-64)

The other arguments in SBC's and Staff's Initial Briefs on this issue have been addressed in AT&T's Initial Brief. (AT&T Init. Br., pp. 142-147) In summary, AT&T continues to recommend adoption of its proposed language for 9.2.2.5.1, i.e., "that AT&T and the HBSS are not required to be on the same LSOG version."

<u>UNE Issue 19</u>: Whether the DSL/PSD parameter or proof of continuity parameter test is appropriate to assess the loop DSL qualifications?

AT&T has adequately responded to the other parties' arguments on this issue in the section of its Initial Brief on UNE Issue 19 (AT&T Init. Br., pp. 147-152).

UNE Issue 20: What language should apply to situations where the Ameritech personnel are on hold for 10 minutes in acceptance testing and cooperative testing situations?

AT&T refers the Commission to its Initial Brief at pages 152-154 and will not repeat its arguments in support of its position. AT&T's proposal will ensure that no loop is deemed accepted until testing is completed. This, in turn, will guard against premature acceptance and "out of service" incidents for AT&T's customers. SBC erroneously contends that AT&T will have no incentive to act within the 10 minute window if its proposal is adopted. To the contrary, AT&T has every incentive to act within the 10 minute window because AT&T wants to get service up and running to its customers as quickly as it can. Any delay impacts not only the end user but AT&T's reputation in the marketplace. Accordingly, AT&T's proposal should be adopted.

UNE Issue 21: Should the basic metallic loop parameters or the specific loop parameters associated with the loop be verified during cooperative testing?

AT&T has adequately responded to the other parties' arguments on this issue in the section of its Initial Brief on UNE Issue 21 (AT&T Init. Br., pp. 147-152).

UNE Issue 22:

> **AT&T Issue: Should SBC Ameritech be required to guarantee the loop provided to AT&T performs as specified by AT&T?**
>
> **SBC Issue: Should SBC be required to guarantee local loops will perform as ordered by AT&T beyond basic metallic loop parameters?**

AT&T has adequately responded to the other parties' arguments on this issue in the section of its Initial Brief on UNE Issue 22 (AT&T Init. Br., pp. 147-152).

UNE Issue 23: Should AT&T be allowed to commingle local and toll OS/DA traffic on existing FGD trunks?

SBC contends that permitting AT&T to commingle local and toll OS/DA traffic on existing Feature Group D trunks is technically infeasible and SBC does not do it in any other state. (SBC Init. Br., pp. 151-152) SBC's statements are directly at odds with SBC's existing contractual obligation in Indiana – an obligation that has existed since November 20, 2000 – to "allow AT&T to commingle local and toll OS and/or DA traffic on existing OS and/or Feature Group D trunks." (See AT&T Init. Br., pp. 155-156) It is disingenuous of SBC to say it is technically infeasible to allow AT&T to commingle its local and toll OS/DA traffic on existing Feature Group D trunks when it has been obligated to do so in a sister state for two and a half years.

SBC also contends that the Commission determined in its Order in Docket 01-0662 that SBC has no obligation to provide custom routing over Feature Group D. (SBC Init. Br., pp. 151-152) First, as the May 13, 2003 Order in Docket 01-0662 indicates, that proceeding "is not set up to adjudicate the rights of any parties." See Order dated May 13, 2003, par. 44. Thus, no rights or obligations were adjudicated in that docket. The Commission simply determined that SBC's custom routing offerings were adequate to satisfy the FCC's custom routing requirements for the purpose of Section 271 checklist compliance. It did not conclude that SBC was not required to allow commingling over Feature Group D trunks or that AT&T is not entitled to it. In fact, a review of the Order references cited by SBC make clear that the Commission determined that WorldCom had not submitted detailed evidence into the record adequate for the Commission to determine whether the custom routing it seeks is technically feasible. As we know, however, SBC is already required to provide in Indiana the exact custom routing that AT&T seeks here.

Finally, SBC contends that AT&T has agreed to use the BFR process for commingling local and toll OS/DA traffic on existing Feature Group D trunks. The sentence to which SBC refers to support its position is the agreed upon sentence that *immediately follows* the sentence in dispute in Issue 23. By agreeing to that sentence, AT&T agrees that it will pursue "additional methods of customized routing of local and/or OS/DA traffic" – i.e., in addition to the commingling of local and toll OS/DA traffic over existing Feature Group D trunks – pursuant to the BFR process. This sentence provides for custom routing methods *in addition* to the custom routing AT&T requests in UNE Issue 23. Accordingly, AT&T's proposed language should be adopted.

UNE Issue 24:

UNE Issue 24(a): Should Ameritech be required to deploy custom routing for AT&T based on AT&T's proposed schedule or must AT&T order custom routing via the BFR process?

SBC first contends that AT&T's requested custom routing using existing Feature Group D trunks is not technically feasible. Rather than repeat its arguments here, AT&T refers the Commission to UNE Issue 23 above as well as pages 154-156 of its Initial Brief for a discussion of why SBC is wrong.

SBC next contends that AT&T should use the BFR process because the FCC has stated that a CLEC can be required to use the BFR process. AT&T agrees that a BFR process is potentially appropriate if the request is unique, novel or extraordinary in some way, but AT&T's request is not. Custom routing is common in the industry, and SBC is already required to provide custom routing over Feature Group D trunks elsewhere in its region. Therefore, there is no need to apply the potentially time consuming and costly BFR process here. In fact, as AT&T discussed in its Initial Brief, the custom routing schedule AT&T proposes in its language for

Section 9.2.6.1.7.2 was proposed by SBC's own parent company and was implemented by SBC in California. (See AT&T Ex. 6.0, p. 79; AT&T Init. Br., pp. 156-157)

Accordingly, AT&T's proposed language for Section 9.2.6.1.7.2 should be adopted to ensure AT&T receives custom routing in a timely fashion consistent with the implementation schedule SBC has agreed to elsewhere throughout its thirteen state region.

UNE Issue 24(b): In what manner should SBC-Illinois be required to provide customized routing associated with UNEs?

SBC addresses UNE Issue 24(a) and UNE Issue 24(b) together; hence, AT&T refers the Commission to its reply on UNE Issue 24(a) above. The language AT&T proposes for UNE Issue 24(b) in Section 9.2.6.1.7.2 is identical to the language adopted by the Indiana Utility Regulatory Commission on November 20, 2000 in IURC Cause No. 40571-INT-03 and appearing in Section 9.2.6.1.7.2 of the SBC Ameritech/AT&T ICA in Indiana.

UNE Issue 25: Under what conditions should Ameritech provide Unbundled Shared Transport?

AT&T agrees with the language proposed by Staff in its Initial Brief at page 70. According to Staff, SBC agrees with that language as well. Accordingly, there is no remaining dispute on UNE Issue 25 and Staff's proposed language should be adopted.

UNE Issue 27:[31] Should the reciprocal compensation terms and conditions contained in Article 21 apply to ULS-ST reciprocal compensation?

This is essentially the same issue as Intercarrier Compensation Issue 1. SBC presented its substantive argument on this issue in the section of its Initial Brief on Intercarrier

[31] UNE Issue 26 has been settled.

Compensation Issue 1. Staff addressed this issue in the section of its Initial Brief on UNE Issue 27. AT&T's reply arguments are set forth in the section of this Reply Brief on Intercarrier Compensation Issue 1. For the reasons presented there and in AT&T's Initial Brief, the specific unbundled network element ULS-ST reciprocal compensation rate proposed by AT&T and shown in Line 485 of the Pricing Schedule should apply for traffic exchanged between AT&T and SBC Illinois where AT&T is purchasing SBC Illinois-provided ULS-ST. Article 21 reciprocal compensation rates will apply when traffic is exchanged between AT&T and SBC Illinois when AT&T provides its own switching functionality. Accordingly, this issue should be resolved by adopting AT&T's proposed language for Schedule 9.2.7, Sections 9.2.7.4.2 and 9.2.7.4.3 of the ICA.

UNE Issue 28: Should SBC-Ameritech be required to provide to AT&T the OCN of 3rd party originating carriers when AT&T is terminating calls as an unbundled switch user of SBC-Ameritech?

This issue is essentially the same as Comprehensive Billing Issue 4 and is similar to UNE Issue 17, in that it involves whether SBC should be required to provide AT&T the OCN of the originating carrier of calls terminated by AT&T when using unbundled local switching leased from SBC. As discussed in the section of this Reply Brief on UNE Issue 17, Staff proposed certain language to resolve UNE Issue 17, which Staff stated should also be applicable to UNE Issue 27 (sic; AT&T presumes Staff meant UNE Issue 28) and Comprehensive Billing Issues 4 and 5 (see Staff Init. Br., pp. 66-67); AT&T stated that Staff's proposed language would be acceptable with certain modifications.

SBC raises one other issue in connection with UNE Issue 28, namely, the inclusion of the following proposed sentence in Section 9.2.7.4.4: "AT&T will be solely responsible for establishing compensation arrangements with all telecommunications carriers to which ULS-ST

traffic is delivered or from which ULS-ST traffic is received, including all ULS-ST traffic carried by Shared Transport-Transit." (SBC Init. Br., p. 158) SBC's proposal is a rather classic example of a Catch-22 (or perhaps of something more Kafkaesque): SBC expects AT&T to make all compensation arrangements with originating carriers transiting SBC's switch, but SBC is unwilling to agree to provide AT&T with the OCN information AT&T needs to identify the originating carriers.

That observation aside, SBC is correct that AT&T's concern with this sentence is that it could be viewed as inconsistent with AT&T's position that it should be allowed to bill SBC as the originating carrier for any calls terminated by AT&T for which SBC fails to provide the originating carrier OCN. (SBC Init. Br., p. 158) AT&T would not object to the addition of SBC's additional sentence to Section 9.2.7.4.4 so long as the sentence AT&T proposes concerning its right to bill SBC for calls for which no originating OCN information is provided is appropriately modified by a "notwithstanding" reference. In summary, the complete language would be as follows:

> In accordance with Section 9.2.2.4.4 of Schedule 9.2.7 "Interoffice Transmission Facilities" and Article 27.14.4 of Article 27 "Comprehensive Billing", SBC Illinois will provide the records to AT&T in OBF EMI format and retain these records for one year. The OCN will be included in the EMI record in accordance with industry standards. AT&T will be solely responsible for establishing compensation arrangements with all telecommunications carriers to which ULS-ST traffic is delivered or from which ULS-ST traffic is received, including all ULS-ST traffic carried by Shared Transport-Transit. Notwithstanding the immediately preceding sentence, any records received without the originating OCN will be treated as though originated by SBC-Illinois in accordance with the terms of Schedule 9.2.7 of this Agreement.

UNE Issue 29: How should reciprocal compensation rate elements be structured?

AT&T relies on its argument in its Initial Brief on this issue (AT&T Init. Br., pp. 165-68) and, to the extent applicable, on its argument on Intercarrier Compensation Issue 1 in its Initial Brief (pp. 207-213) and this Reply Brief.

UNE Issue 30: Should Ameritech be required to administer LIDB information provided by AT&T?

AT&T refers the Commission to its Initial Brief on UNE Issues 30 and 33 and its Reply Brief on Issue 33 and will not repeat those arguments here. AT&T also notes that, quite tellingly, SBC's Initial Brief does not dispute the fact that it administers LIDB information provided by AT&T. In response to AT&T's contention that SBC acknowledged in its arbitration with MCI in Missouri that it administers LIDB information provided by CLECs, SBC simply states that the Missouri arbitration involved SWBT and not SBC Illinois and "there is no rule of law that says affiliated companies (or even the same company) must enter identical contract terms in different states." (SBC Init. Br., p. 161) Noticeably absent is any statement by SBC Illinois that it does not administer LIDB information provided by AT&T or any other CLEC in Illinois, as it admittedly does in Missouri. As AT&T witness Noorani stated, SBC administers LIDB information provided by AT&T in Illinois and should continue to do so.

SBC also contends that the language in its Missouri ICA with MCI is in addition to other LIDB terms and conditions, and that AT&T's proposal language is the "sole" term relating to LIDB. (SBC Init. Br., p. 161) That is not accurate. As discussed below in conjunction with UNE Issue 33, Schedule 9.2.8-10 through 9.2.8-17 of the Parties' ICA contains include numerous terms and conditions applicable to LIDB, including Calling Card Validation, Price and Payment, Ownership of Information, Limitation of Liability, Communication and Notices, Confidentiality, Mutuality and Manner of Provisioning. Accordingly, SBC should be required to

administer LIDB information provided by AT&T, and AT&T's proposed language for UNE Issue 30 should be adopted.

UNE Issue 31: What interfaces are used to administer data when AT&T resells data to a third party?

SBC's Initial Brief goes to great lengths to attempt to persuade the Commission that AT&T's specific references to the OSMOP interface and the Sleuth system are not appropriate. What SBC's Initial Brief fails to mention, however, is that OSMOP is nothing more than another name for the LIDB SMS (see testimony of SBC witness Pellerin, SBC Ex. 10.0, p. 83) and that the Sleuth system is the system that SBC in fact uses for fraud detection.

AT&T is willing to compromise to the extent the Commission decides to refer to direct unbundled interfaces more generically rather than identifying specific interfaces. If the Commission decides to do so, AT&T agrees to reference direct unbundled interfaces generically, but does not agree to tie those interfaces to those "as defined in LIDB-AS." To the extent the language the Commission adopts is specific, then AT&T continues to propose that the ICA reference the Sleuth and OSMOP interfaces in particular.

In sum, AT&T recommends that, to the extent the Commission desires to adopt more general language, the Commission adopt SBC's proposed language as modified:

> If AT&T resells the services associated with its Line Records to a third party, and those Line Records remain in SBC-AMERITECH's LIDB, AT&T will administer those records through **direct unbundled interfaces ~~as defined in LIDB-AS~~.**

If the Commission wishes to adopt more specific language, then AT&T recommends that the Commission adopt the language supporting the OSMOP interface and the Sleuth system AT&T currently uses (AT&T proposed Section 9.2.8.19.4) rather than SBC's reference to the interfaces as defined in its LIDB-AS schedule.

UNE Issue 32:

Issue 32(a): Should SBC be required to provide access to SBC designed AIN features, functions and services?

Issue 32(b): Should access to AIN be provided pursuant to BFR with all terms and conditions and pricing negotiated pursuant to the BFR?

It is undisputed that the FCC's *UNE Remand Order* requires SBC Illinois to unbundle AIN databases and the related Service Creation Environment ("SCE"), Service Management System ("SMS") and Signal Transfer Points ("STPs") to CLECs. Further, that Order requires the ILEC to make available the AIN features (such as its "Privacy Manager" feature) *as UNEs* if the ILEC does not provide non-discriminatory access to its AIN SCE. AT&T in its Initial Brief showed that SBC's offer of access to its SCE on a BFR basis was inadequate, discriminatory and – particularly given SBC's aggressive use of Privacy Manager as a "winback" tool – anticompetitive. AT&T has been forced to pursue this issue through private arbitration in California and via a complaint process in Texas, as a result of which SBC is required to provide AT&T with Privacy Manager in both states. (AT&T Init. Br., pp. 172-73)

SBC Illinois in its Initial Brief has modified its proposal somewhat. It now proposes language for Section 9.2.8.21 that removes the objectionable BFR process with respect to access to the SCE and SMS for purposes of the *design* of AIN services. This is a step in the right direction. SBC Illinois continues to insist on the BFR requirement with respect to the *deployment* of an AT&T AIN service, however, and as a result the infirmities pointed out in AT&T's Initial Brief remain. It is of little practical use to be able to *design* services if they cannot be efficiently *deployed* by AT&T and thus *used* by AT&T customers. Without deployment on a standardized basis, AT&T cannot guarantee the SBC will commit to offering access to the AIN network for use by AT&T customers rather than merely providing "access" to

the AIN network without providing the ability for it to be deployed and used by AT&T customers. SBC Illinois under its proposal would remain free to impose unnecessary charges and to interject indefinite delay and inherent uncertainty on the process. Not only that, SBC's justification for the requirement in connection with testing of new AIN services is off the mark. It is entirely in AT&T's interest to test the AIN-based services it develops in order to provide good retail service to its customers. Any failure or incompatibility would only harm AT&T and its customers. SBC Illinois is raising the specter of "jeopardy" to the public switched network simply to bootstrap its proposal to insert a BFR process and render access to its SCE/SMS environment unworkable in the end.

Thus, SBC Illinois should develop a UNE "product" that is capable of being ordered by a CLEC on a standard basis and comprising pricing and other necessary terms and conditions, including cooperative testing sufficient to support deployment of CLEC-developed AIN services. Until such time as that product is developed and offered by SBC Illinois, it should be required to provide Privacy Manager as a UNE.[32]

Accordingly, SBC's proposed language for Issue 32 (Schedule 9.2.8.21) should be modified as follows:

> 9.2.8.21 Upon request by AT&T, and where technically feasible, SBC-AMERITECH will provide AT&T with access to SBC-AMERITECH's Advanced Intelligent Network (AIN) platform, AIN Service Creation Environment (SCE) and AIN Service Management System (SMS) as set forth below:
>
> 9.2.8.21.1 Access to the Service Creation Environment ("SCE") of the AIN Database
>
> 9.2.8.21.1.1 General Description and Specifications of the Unbundled Element

[32] As shown in AT&T's Initial Brief (at 176-79), pricing can be readily established by the Commission, and SBC can implement the offering in a matter of days.

9.2.8.21.1.1.2 SBC-AMERITECH will provide AT&T access to SBC-AMERITECH's AIN Service Creation Environment ("SCE") for the creation and modification of AT&T AIN services. ~~The Parties will mutually agree to the rates, terms, and conditions applicable to such access~~

~~9.2.8.21.1.1.3 All AIN services to be deployed in SBC Ameritech's network will require field testing and testing in SBC-AMERITECH's AIN laboratory prior to deployment into the network. Testing will evaluate compatibility with SBC AMERITECH's network, including proper integration with any needed support systems and appropriate interaction with non-AT&T end users and existing services. An AT&T AIN service shall not be deployed in SBC Illinois' network if it does not successfully complete such lab and field testing. The Parties will mutually agree to the rates, terms, and conditions applicable to testing, design and deployment.~~

9.2.8.21.1.1.3 SBC Ameritech will offer field testing and testing in SBC-Ameritech's AIN laboratory as a part of providing access to the SCE of the AIN database. This testing will evaluate AT&T's criteria for its service and what specific changes need to be made to AT&T's logic to be compatible with SBC Ameritech's network. It will also evaluate SBC's documentation on how well its documented process actually provides access to the SCE. Finally, this testing must include SBC's work in modifying specific ordering procedures in order to make access to the SCE workable for AT&T and its end users.

9.2.8.21.1.2 Form of Access. SBC-AMERITECH will provide to AT&T the following forms of access to SCE and any other forms of access mutually agreed upon:

9.2.8.21.1.2.1 Under Option 1, AT&T personnel will operate SBC-AMERITECH's SCE terminals themselves.

9.2.8.21.1.2.2 Under Option 2, AT&T will develop service logic using an AT&T SCE platform that is compatible with SBC-AMERITECH's systems and will transfer the file to SBC-AMERITECH for testing and deployment.

9.2.8.21.1.3 Either party may initiate Alternate Dispute Resolution to resolve disputes regarding AIN.

9.2.8.21.2 Access to the Service Management System ("SMS") of the AIN Database

9.2.8.21.2.1 General Description and Specifications of the Unbundled Element. SMS for AIN will allow AT&T to update AT&T AIN customer data residing in SBC-AMERITECH's AIN network for use on AT&T lines.

9.2.8.21.4.2.1 Form of Access. SBC-AMERITECH will provide AT&T access to SBC-AMERITECH's AIN service management system ("SMS")

for the purpose of administering AT&T's customer data associated with AT&T-developed AIN services residing on SBC-AMERITECH's SCP. SBC-AMERITECH will provide, at AT&T's request, electronic access to an AIN SMS system when available.

~~9.2.8.21.4.2.2 The Parties will mutually agree to the rates, terms and conditions for such access.~~

9.2.8.21.3. SBC-AMERITECH shall develop a standard offering such that access to the AIN SCE can be ordered by AT&T using standard ordering procedures, with pricing on a TELRIC basis, and including cooperative testing sufficient to support deployment of CLEC-developed AIN services. Until such time as access to the AIN SCE has been developed by SBC on a standard basis and SBC has shown that its process can be ordered and deployed by AT&T and is usable by end users, AT&T may purchase the entire set of Advanced Intelligent Network ("AIN") features or functions, specifically including Privacy Manager, as a UNE.

If SBC is serious about offering nondiscriminatory access to its AIN development and deployment environment, this approach will achieve that result in timely fashion. In the meantime, SBC Illinois' unfair competitive advantage with respect to AIN access would be removed.

Accordingly, the Commission should adopt AT&T's proposed language for UNE Issue 32.

UNE Issue 33: Should the LIDB-AS schedule be a part of the interconnection agreement?

SBC proposes its generic LIDB-AS schedule that contains myriad terms and conditions that SBC proposes to impose when it serves as a carrier's LIDB database provider. AT&T contends that the LIDB provisions negotiated and being arbitrated by the Parties for UNE Issues 30 and 31 are sufficient to govern the business relationship between the Parties as it relates to LIDB database functionality. Today, AT&T only uses SBC as a LIDB database provider when it uses SBC's unbundled local switch ports. AT&T does **not** use SBC as a third party LIDB provider in those instances where AT&T is a facilities based provider. The majority of the

language in SBC's proposed generic LIDB-AS schedule pertains to electronic updates of the LIDB database when a CLEC is a facilities-based provider using SBC as a third party LIDB database provider and, consequently, it is not applicable to AT&T's current relationship with SBC. Should AT&T select SBC as a third party LIDB database provider, it will negotiate detailed terms and conditions with SBC to govern SBC's provision of that service – including terms and conditions of the nature discussed by SBC in its Initial Brief – and will presumably amend the ICA. Those terms and conditions may coincide with the terms and conditions included in SBC's proposed generic LIDB-AS schedule, and they may not. Until such time as that occurs, there is no need to include the generic terms and conditions contained in SBC's LIDB-AS schedule in the ICA, and AT&T does not agree that those terms and conditions will govern in the event it chooses SBC as a third party LIDB database provider.

SBC contends that if its LIDB-AS Schedule is not adopted, there are no terms and conditions contained in the ICA governing SBC's provision of LIDB Database Service to AT&T. Again, the language of the ICA demonstrates that SBC's concern is unfounded. Schedules 9.2.8-10 through 9.2.8-17 include numerous terms and conditions applicable to LIDB, including Calling Card Validation, Price and Payment, Ownership of Information, Limitation of Liability, Communication and Notices, Confidentiality, Mutuality and Manner of Provisioning. Accordingly, SBC's LIDB-AS Schedule should be rejected.

UNE Issue 34: Should this schedule have a separate indemnification section over and above the language found in the GTCs?

SBC proposes that the ICA have a separate indemnification clause for OS and DA in addition to the generally applicable indemnification provision included – and agreed to – in Article 1, Section 1.7.3 Obligation to Indemnify. AT&T objected to SBC's proposal as

redundant and unnecessary. In the spirit of compromise, AT&T agrees to the language SBC proposes for UNE Issue 34 with two caveats. First, AT&T proposes that the clause "unless the loss was caused by the gross negligence, or intentional or willful misconduct by SBC-AMERITECH, its employees or agents" be included at the tail end of SBC's proposed language. AT&T assumes this is acceptable to SBC since this qualifying language is consistent with the language contained in the general indemnification provisions of the ICA, to which SBC has already agreed. Second, AT&T proposes that SBC's proposed language and the above qualifying language be placed in Section 1.7.3 and, in particular, be made a new subpart 1.7.3.1.2. In this way, all the indemnification obligations contained in the ICA will be contained in the same portion of the ICA, which will avoid unnecessary confusion.

V. COLLOCATION ISSUES (ICA ARTICLE 12)

Collocation Issue 1: Should AT&T have the right to access and maintain virtually collocated equipment?

SBC correctly acknowledges, as it must, that AT&T has the right today – and has had it since January 1997 – to access and maintain its virtually collocated equipment. As this Commission stated in its Arbitration Decision in Docket No. 96 AB-003/004, its decision "to allow Ameritech to select the type of personnel to act as an escort … should address Ameritech's concerns over possible damage to its network because it will have the appropriate personnel at the site to ensure against inappropriate actions by AT&T." Order, p. 54.

Alluding to non-specific and unidentified security concerns and similarly vague and unsubstantiated "violations, by AT&T and other CLECs," SBC summarily rejects AT&T's proposal. As AT&T witness Noorani testified, however, AT&T is unaware of any security violations by AT&T. (AT&T Ex. 6.0, p. 8) SBC has not brought any such violations to the attention of AT&T, either formally or informally. Any security violations would certainly be quite rare, if they exist at all, given that SBC has had the right to choose the escort, which is paid for by AT&T. The logical conclusion to draw from SBC's silence regarding any such violations is that if in fact such violations have occurred, they are the result of SBC's failure to choose an appropriate or reliable escort. But again, AT&T is unaware of a single security violation, and SBC has advanced only insinuation, not facts.

SBC also misleadingly argues that this Commission's Order in Docket 99-0511 and the FCC's Orders regarding virtual collocation, both of which post-dated the AT&T arbitration decision giving AT&T the right to access and maintain its virtually collocated equipment, have "effectively overruled" the Commission's arbitration decision. In fact, SBC goes so far as to

state that "the FCC has concluded that CLECs are not entitled to access to virtual collocation." (SBC Init. Br. at 182)

SBC's Initial Brief seriously misstates the record and the Commission's Order in Docket 99-0511. In that docket, the issue arose because SBC (then Ameritech) wanted to add the following sentence to Code Part 790's definition of "virtual collocation": "The virtual collocator has no right to enter the LEC central office." Order dated March 29, 2002, Docket 99-0511, p. 91. In arguing for the inclusion of that restriction, Ameritech relied upon the very same FCC paragraphs, provisions and orders it relies upon at page 182 of its Initial Brief. Id., p. 92. The critical fact SBC's Initial Brief omits is that the Commission ***rejected SBC's proposed sentence denying virtual collocators the right to enter the LEC central office.*** As such, nowhere in the revised Code Part 790 rule adopted by the Commission does it state that a virtual collocator shall not have the right to access its virtually collocated equipment.

Rather, the Commission concluded that SBC's proposed language was "unnecessarily restrictive in that it would prohibit an ILEC and a CLEC from voluntarily negotiating terms under which a CLEC may have access to virtually collocated equipment." Id., p. 93. Contrary to SBC's assertion here that "the FCC has concluded that CLECs are not entitled to access to virtual collocation" (SBC Init. Br., p. 182), this Commission concluded in its Order in Docket 99-0511 that: ***"Nothing in the FCC's orders or rules prevent carriers from [accessing virtually collocated equipment] and it appears from the record that some have already done so."*** Id., p. 93 (emphasis added). It is clear from the Commission's pronouncements that nothing in that Order "overruled" AT&T's prior arbitration decision – as SBC contends – or retracted the rights of those carriers that already had the right to access their virtually collocated equipment, including AT&T. Accordingly, SBC's arguments have already been rejected by this

Commission. The Commission should maintain the status quo and continue to allow AT&T the right to access and maintain its virtually collocated equipment, as it does so today. As AT&T witness Noorani testified, this process has proven over the past seven years to be workable, secure, efficient and cost-effective. (AT&T Ex. 6.0, pp. 3-10)

Collocation Issue 2(b): Can AT&T locate equipment on its own side of a condo building to access UNE's by cabling to Ameritech, in place of a collocation?

AT&T addresses this issue in its discussion of Interconnection Issue 3.

Collocation Issue 3: Should the ICA terms and conditions allow AT&T to have access between AT&T's collocation space and Ameritech's distributing frame to verify and test intra-office wiring?

SBC complains that AT&T should not have access to SBC's MDF because the MDF is "the heart of an ILEC telecommunications network." (SBC Init. Br., p. 187) The point SBC conveniently omits is that the only reason AT&T needs access to the MDF at all is because that is what SBC Illinois has unilaterally declared shall be the "DMARC" point – the point where the ILEC and the CLEC networks meet in the central office. As AT&T witness Noorani testified, SBC cannot use its own unilateral choice of the MDF as the DMARC point both as a shield and as a sword. If SBC does not want AT&T to have access to its MDF, then SBC should choose a DMARC point that is not located at the MDF, as Verizon and SBC-Pacific Bell have done. In those regions, the concern SBC has raised here is moot.

SBC's policy (and proposal) is both discriminatory and inequitable. SBC cannot say on the one hand that the CLEC – AT&T – is responsible for fixing and testing any wiring between the CLEC's collocation cage and SBC's MDF, but then not grant reasonable and nondiscriminatory access to that wiring. When SBC needs access to that wiring, the access is

immediate and available 24 hours a day, seven days a week. When AT&T needs access to that wiring (because SBC has elected to place the DMARC at the MDF), it needs to hire a third party contractor approved by SBC Illinois. That person cannot be an AT&T employee because SBC's unilaterally imposed policy will not effectively allow it to be an AT&T employee. Then the contractor must set up an appointment at the central office and choose a time that is mutually agreeable with SBC. While all this occurs, problems persist.

SBC contends that the Commission denied Rhythms and Covad access to the MDF for their desired purposes in the Ameritech/Rhythms and Covad arbitration. AT&T was not a party to that arbitration, and the services AT&T provides and seeks to provide are not limited to data services. To assume that Rhythms and Covad – one of which is now bankrupt and has ceased to exist and the other of which provides data services only – have adequately represented the business needs and interests of AT&T is an illogical leap. The Commission's own Order in Docket Nos. 00-0312/0313 supports the inapplicability of its finding in that case to the circumstances AT&T presents here. SBC cites to the Commission Analysis and Conclusion section appearing at pages 23 and 24 of that Order. The Order's summary of *Ameritech's Position* provides: "Ameritech states that, other than making vague, unsupported assertions, Rhythms and Covad have provided no evidence that obtaining access at the MDF is necessary or that Ameritech is unable to properly provision the HFPL absent such MDF test access." That is not the case here. In fact, AT&T witness Noorani provided ample examples of the real world difficulties AT&T has encountered as result of SBC's "No MDF Access" policy. (See AT&T Initial Brief, pp. 191-198)

SBC also contends that the Commission's decision in ICC Docket 01-0662 is instructive in determining AT&T's right to access the MDF. It is not. First, SBC took the position in that

docket, and the Commission agreed, that the proceeding was "not set up to adjudicate the rights of any parties." See Order dated May 13, 2003, par. 44. Thus, no rights of AT&T were adjudicated in that docket. The only conclusion reached by the Commission on this issue in Docket No. 01-0662 was that SBC's failure to offer AT&T access to the MDF was not sufficient to withhold a recommendation that SBC has complied with the checklist items of Section 271 of the federal Telecommunications Act in order to offer long distance service. The limited nature of the Commission's investigation of this issue is confirmed in the Phase I Order itself, issued February 8, 2003. While the Commission acknowledges that "access to the MDF is a matter of great concern to certain of the CLECs" (par. 284), it concluded that the FCC has not required BOCs to provide access to the MDF as a precondition to interLATA relief. (par. 286). By no means is it appropriate to extrapolate this finding to a finding that AT&T is not entitled to nondiscriminatory and reasonable access to the MDF as a matter of sound, pro-competitive policy. SBC's policy of not allowing access to the MDF is anticompetitive, discriminatory and unreasonable, and AT&T's proposed language should be adopted.

VI. LOCAL NUMBER PORTABILITY (LNP) ISSUES (ICA ARTICLE 13)

LNP Issue 1: Should the ICA contain Hot Cut language over and above that covered in the ICA's OSS Schedule 33.1?

SBC, in its Initial Brief, does not respond to AT&T's two principal objections to SBC's proposed language for Section 13.4 of the ICA: (1) Any cost that might possibly be related to coordinated hot cuts ("CHC") would more likely be associated with the handling of UNE Loop with LNP orders, rather than standalone LNP orders. (2) If SBC believes it should be compensated for CHC in standalone LNP situations, it should develop a cost-based non-recurring charge for this service, rather than bill on an *ad hoc*, case-by-case basis as it proposes. The proposed charge should be presented and approved in a Commission proceeding in which SBC presents appropriate cost support for the proposed charge. (See AT&T Init. Br., pp. 200-201)

SBC states that its *ex parte* submission to the FCC that was attached to AT&T witness Scott Finney's testimony (AT&T Ex. 8.1) shows that SBC is compensated for CHC in California and Texas, but not in Illinois. (SBC Init. Br., p. 192) That was exactly AT&T's point: Since SBC has touted to the FCC (and various state commissions) the absence of additional charges for CHC in the SBC Midwest region as part of its argument that "cost is not an impediment" to CLECs transitioning from UNE-P to facilities-based service, SBC should not now be proposing to add additional charges for CHC. (See AT&T Ex. 8.0, pp. 3-4)

For the reasons stated in AT&T's Initial Brief (pp. 199-201), SBC's proposed additional Section 13.4 of the ICA should be rejected.

LNP Issue 2:

SBC Illinois Issue: Must SBC Illinois Include Enhanced LNP Process Language in the Agreement?

AT&T Issue: Should the ICA Contain Language Describing an Enhanced LNP Process That SBC Illinois Will Make Available During the Term of the Agreement?

AT&T relies on its Initial Brief (pp. 201-203) on this issue, which fully addressed the arguments in the initial briefs of SBC (pp. 194-95) and Staff (pp. 73-75). For the reasons given in AT&T's Initial Brief, the Commission should resolve LNP Issue 2 by (1) adopting AT&T's proposed language for Sections 13.5.1 through 13.5.4 of the ICA describing the LNP A&D Process (or, in the alternative, directing SBC to provide specific language describing the process if it believes that AT&T's proposed language is inaccurate); and (2) directing SBC that if SBC believes it is appropriate to separately charge CLECs for use of the LNP A&D process, SBC should develop proposed charges and file the proposed charges along with appropriate supporting cost information with the Commission to initiate a proceeding to review and approve SBC's proposed charges and the cost basis for those charges.

VII. POLES, DUCTS AND RIGHT-OF-WAY ISSUES (ICA ARTICLE 16)

ROW Issue 1: Should SBC-AMERITECH permit AT&T to do its own make ready work?

The only support SBC provides for its position is an FCC Bureau Order dated June 7, 2000. (See SBC Init. Br., p. 197) As SBC concedes, that Order was subsequently vacated. It is curious that SBC would cite to this decision as supporting its position, however, given the fact that the FCC, in that Bureau Order, ordered that Virginia Electric and Power Company, the Respondent, "CEASE AND DESIST from applying discriminatory standards forbidding Complainant [Cavalier Telephone] … from utilizing qualified workers who are not employed by Respondent for Complainant's make-ready work." *In the Matter of Cavalier Telephone, LLC v. Virginia Electric and Power Company,* File No. PA 99-005 (rel. June 7, 2000), par. 40.

This result is consistent with well-established law in this area. In its *First Report and Order,* CC Docket No. 96-98, 11 FCC Rcd. 15499 (1996) at paragraph 1182, the FCC provides, in pertinent part:

> While we agree that utilities should be able to require that only properly trained persons work in the proximity of the utilities' lines, we will not require parties seeking to make attachments to use the individual employees or contractors hired or pre-designated by the utility. A utility may require that individuals who will work in the proximity of electric lines have the same qualifications, in terms of training, as the utility's own workers, but the party seeking access will be able to use any individual workers who meet these criteria. Allowing a utility to dictate that only specific employees or contractors be used would impede the access that Congress sought to bestow on telecommunications providers and cable operators and would inevitably lead to disputes over rates to be paid to the workers.

The FCC confirmed its policy in its *Order on Reconsideration,* CC Docket No. 96-98, FCC 99-266, 14 FCC Rcd. 18049 (rel. October 26, 1999), par. 86:

> We have been presented with no facts or arguments that necessitate modification of the Commission's decision that otherwise qualified, third-party workers may perform pole attachment and related activities, such as make-ready work, in the proximity of electric lines. In the alternative, several of the utilities have sought clarification that a utility has reasonable discretion to establish training requirements. We also find that clarification on this point is unnecessary. The

> Local Competition Order expressly gives a utility the ability to require the same qualifications and training of individuals working in proximity to utility facilities as a utility would impose on its own employees. We reiterate that a utility may require that individuals who will work attaching or making ready attachments of telecommunications or cable system facilities to utility poles, in the proximity of electric lines, have the same qualifications, in terms of training, as the utility's own workers, but the party seeking access will be able to use any individual workers who meet these criteria. Thus, utilities may ensure that individuals who work in proximity to electric lines to perform pole attachments and related activities meet utility standards for the performance of such work, ***but the utilities may not dictate the identity of the workers who will perform the work itself***. As we stated in the Local Competition Order, allowing a utility to dictate that only specific employees or contractors be used would impede access and lead to disputes over rates to be paid to the workers. (emphasis supplied).

Just last June, in *Southern Company v. FCC,* 293 F.3d 1338, 1350-1351 (June 13, 2002), the Eleventh Circuit Court of Appeals affirmed the FCC's guidelines requiring utilities to allow attachers to use their own workers – so long as they are adequately trained – to perform their own make-ready work:

> we find the FCC's rule within the scope of its discretion. Once an attaching entity is granted access to a utility's facilities, the attacher must install its equipment on the utility's facilities and perform maintenance on that equipment from time to time, and the FCC recognizes that forcing third-party attachers to use the utility's workers to construct and maintain the attachments would impede the attachers' access to the poles and lead to disputes over compensation, quality of work, and the like. The FCC's rule mandates that third-party workers have access to the poles in order to prevent these potential disputes, but permits utilities to set standards for those workers to ensure that they have the necessary qualifications. This guideline is a reasonable effort to regulate one of the fundamental "conditions" of a pole attachment - namely, the process by which an attachment is made and maintained. The guideline represents an attempt to balance the interests involved in a measured and reasonable way, and *Chevron* dictates that we accord it appropriate deference. We therefore decline to overturn the FCC's findings regarding the regulation of third-party workers.

AT&T's proposal is consistent with the FCC's rules and guidelines. SBC's proposed language, on the other hand, would impede access and lead to disputes over rates to be paid to the workers. Again, it is important to note that AT&T's proposal only extends to those situations where SBC cannot perform the work in AT&T's desired timeframe.

Finally, SBC contends that AT&T's proposal would interfere with SBC's collective bargaining agreements with the IBEW since "[t]his collective bargaining agreement states that work can only be done by others (with some restrictions) if such work was customarily done by others under previous collective bargaining agreements." (SBC Init. Br., p. 197-198) SBC has not submitted its collective bargaining agreements into the record, in whole or in part, to substantiate these speculative assertions. SBC has not submitted record evidence that the restrictions or exclusions contained in these unseen agreements apply here. Moreover, and perhaps most importantly, SBC's own argument provides support for AT&T's position. If it is true that work customarily done by others under previous agreements is a condition of its collective bargaining agreements, as SBC contends, then SBC's proposal is a solution looking for a problem. In fact – and this is a fact SBC neglects to mention – AT&T has had the right since its first arbitration to perform its own Make Ready Work. See Order dated November 26, 1996 in ICC Docket No. 96 AB-003/004, p. 52; see also AT&T Initial Brief, pp. 204-205. Not once in the seven years that have elapsed has this Commission-granted right interfered with SBC's collective bargaining agreements, and there is absolutely no reason to believe that any late breaking interference is imminent. AT&T's proposal, which maintains the status quo, should be adopted.

VIII. INTERCARRIER COMPENSATION ISSUES (ICA ARTICLE 21)

Intercarrier Compensation Issue 1: Should the terms of Article 21 apply to traffic where AT&T is using ULS-ST provided by SBC Illinois?

AT&T's Initial Brief addresses SBC Illinois and Staff's assertions on this issue. (See AT&T Init. Br., pp. 207-213) As AT&T stated in its Initial Brief, SBC Illinois' position here is to leverage its unlawful action to *triple* its tariffed reciprocal compensation rate for ULS-ST– which was never sanctioned by the Commission – into a "win" here. The Commission refused in two dockets – 00-0700 and 01-0614 – to sanction SBC Illinois' unlawful rates, and AT&T recommends that the Commission make this case the "trifecta". There is no record support in any Commission docket – including this one – validating SBC Illinois' ULS-ST rates. SBC's unlawful proposal should be summarily rejected.

Intercarrier Compensation Issue 2a: Can the terminating Party charge exchange access to the originating Party for traffic terminating within the originating Party's local calling area?

While presented as one issue, in fact two issues must necessarily be decided here. The first one has AT&T and Staff in agreement – SBC Illinois' proposal would allow it to treat adjacent ILEC calling areas as local for purposes of reciprocal compensation, but deny AT&T the same opportunity. The second issue has SBC and Staff on the same side – SBC's assertion that it should be allowed to continue to dictate AT&T's local calling area for reciprocal compensation purposes, even where it is an AT&T customer the originates the call.

The first issue easily decided. This issue comes into play when the ILEC local calling areas encompass adjacent ILEC exchanges or other areas where extended area service ("EAS") or extended local calling service ("ELCS") exist. SBC proposes a blatantly discriminatory scheme whereby AT&T is forced to pay SBC terminating access when calls are made to customers of ILECs located in adjacent serving areas or where SBC/ILEC EAS/ELCS

arrangements exist. In contrast, if an SBC customer calls customers of ILECs located in adjacent serving areas or where EAS/ELCS arrangements exist, SBC would only pay reciprocal compensation, since this would be treated as a local call. It is frankly hard to imagine a more facially discriminatory position, and SBC's purported "counter-offer" contained in its Initial Brief does nothing to improve this scheme. (See SBC Init. Br., pp. 204-205) The Commission should reject SBC's proposal.

The second issue is more complex, but nonetheless easily summarized. AT&T proposes that the carrier serving the consumer originating the call be allowed to control the definition of its own local calling area. This would replace the existing transitional arrangement where SBC Illinois dictates the local calling area for its competitors. Now that competition is proceeding, the Commission should move beyond this vestigial remnant of the past, for the reasons stated in AT&T's Initial Brief. (See AT&T Init. Br., pp. 213-220)

Intercarrier Compensation Issue 2b: How should ISP-bound, FX traffic be compensated pursuant to the rules established by the FCC in the ISP Remand Order?

AT&T's initial brief addresses both SBC's and Staff's arguments on this issue. (See AT&T Init. Br., pp. 220-225) Two additional points need to be made here, both of which are supported by the Commission's two most recent decisions addressing this exact issue. These decisions are (1) *Essex Telcom, Inc., v. Gallatin River Communications, L.L.C.* where it was held that "with the adoption of the [FCC's] ISP Remand Order, the Commission has been divested of jurisdiction to determine compensation issues as they relate to ISP bound calls."[33]; and (2) the

[33]*Essex Telcom, Inc. v. Gallatin River Communications, L.L.C.*, Docket 01-0427, July 24, 2002, par. 27.

Global NAPs Arbitration with Verizon, where the Commission reached the same decision as it did in *Essex*.[34]

First, Staff's proposal to adopt SBC's proposed language is notably tied to a condition precedent: the Commission must first decide that it has jurisdiction. Citing the two recent Commission orders mentioned above, Staff proceeds to advance its proposal "in the event the Commission finds it has authority" in this proceeding. (Staff Init. Br., p. 81) As AT&T set forth in its Initial Brief, the Commission should follow its own recent precedent and find that the FCC has preempted its jurisdiction over ISP-bound FX traffic.

Second, SBC contends that the "Commission has held for years that calls terminating to FX numbers are not subject to reciprocal compensation, but instead are to be exchanged on a bill-and-keep basis. (SBC Initial Br., p. 207) SBC is rewriting history. As stated above and in AT&T's Initial Brief, the Commission's two most recent decisions addressing ISP-bound FX calling held that it lacks jurisdiction to make such a finding. Thus, SBC's claim that the Commission should ignore the FCC's preemption over ISP calling and claim jurisdiction is not only contrary to federal law, but the Commission's own precedent.

[34]*Global NAPs Illinois, Inc., Petition for arbitration pursuant to section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement with Verizon North, Inc., f/k/a GTE North Incorporated and Verizon South, Inc,. f/k/a/ GTE South Incorporated,* Docket No. 02-0253, Order on Rehearing, November 7, 2002, page 17.

Intercarrier Compensation Issue 2c:

AT&T Issue: Should Non-ISP-bound FX-like traffic be compensable pursuant to the reciprocal compensation provisions of Section 251(b)(5) of the Act?

SBC Issue: Should local calls be defined as calls that must originate and terminate to End Users physically located within the same common or mandatory local calling area?

AT&T refers the Commission to its Initial Brief for a detailed discussion of this issue. (See AT&T Init. Br., pp. 225-240) Only two additional points need to be made here.

First, Staff claims that AT&T proposes "to institute reciprocal compensation charges." (Staff Init. Br., p. 86) AT&T has not made any such new proposal for the simple reason that *today* SBC and AT&T pay one another reciprocal compensation for FX calls. SBC is making the new proposal here: to force AT&T to terminate SBC customer-originated FX calls for free. In other words, AT&T and SBC today pay one another for their cost of terminating these calls. SBC, knowing that its customers disproportionally originate these kinds of calls, concocted its FX arguments in recent years in an effort to deprive AT&T and other CLECs of revenue, and to get free use of AT&T facilities for terminating calls.

Second, SBC discusses the findings of one other state – Connecticut – purportedly supporting its position. (SBC Init. Br., p. 215) Notably, SBC ignores the strongest and most legally important recent precedent – the FCC's recent decision rejecting virtually the same proposal advanced by SBC here. (See AT&T Ex. 2.12, pp. 27-29)

Intercarrier Compensation Issue 2d: If the ICC adopts SBC's proposal for FX-like traffic, under Issue 2, are specific recording processes warranted for FX traffic?

SBC contends that if the Commission does not adopt its proposal forcing AT&T to terminate SBC customer-originated FX calls for free, that this would "revolutionize its established treatment of FX traffic." (SBC Init. Br., p. 217) It cannot be over-emphasized that,

today, AT&T is compensated by SBC for its cost of terminating these calls. It is SBC's proposal, then, that is a "revolution," and a pernicious one at that, because SBC's radical claim is that SBC should be given a free ride on AT&T's facilities.

SBC heavily relies upon a non-binding proposed decision made in Texas as support for its recording proposals here. (SBC Init. Br., p. 218)[35] AT&T showed, however, that this proposed finding has not been adopted by the Public Utility Commission of Texas, almost a year later. Hence, the proposed Texas decision has never been implemented. (See AT&T Ex. 2.12, pp. 29-30)

One final point needs to be made. As the Commission knows, SBC's proposed language allows SBC to dictate what recording methodology is used. One of SBC's proposals will require AT&T to expend over $500,000 up front, with a recurring monthly cost of $325,000 for the "honor" of allowing SBC to terminate its customer-originated calls on AT&T's facilities for free. (AT&T Init. Br., pp. 247-248) AT&T's cost estimate is unrebutted. AT&T urges the Commission not to allow SBC the ability to impose this unnecessary cost. AT&T's proposals are far less costly and, equally important, are subject to the ICA's dispute resolution and verification processes. In the alternative, if SBC wants to force AT&T to develop such a recording capability, it is SBC that should pay for it, since this capability only benefits SBC.

Intercarrier Compensation Issue 2e: If the ICC adopts SBC's proposal for FX-like traffic, under Issue 2, should there be specific audit provisions in Article 21 for the tracking and exclusion of Foreign Exchange traffic?

[35]Here, SBC touts a proposed decision from a Texas arbitration panel as somehow valid precedent. Yet, on numerous issues, including Intercarrier Compensation Issue 8(b), SBC downplays the importance of an FCC decision affirming AT&T's and the Staff's position here that AT&T's switch should be classified as a tandem for reciprocal compensation purposes in the Virginia arbitration proceeding.

SBC Illinois' audit language in Sections 21.7.1, 21.7.1.1 and 21.7.2 specifically requires identification of all FX ten-digit telephone numbers and segregating and tracking of all FX traffic

SBC characterizes its draconian audit proposal as "reasonable", and asserts AT&T can readily comply with existing processes.[36] SBC is wrong. AT&T cannot comply with these requirements without significant modifications to its ordering and billing systems and related processes. As was explained in AT&T's unrebutted testimony, AT&T does not identify or maintain a separate record of FX-like customers and numbers, and does not segregate FX-like traffic or track it separately. First, AT&T would have to identify its embedded base of FX-like customers and their telephone numbers by comparing the rate center associated with each customer's physical service address to the rate center associated with the customer's telephone number(s). If the rate centers are not the same or are not in the same Commission-defined local calling area, the telephone number would be designated as FX-like. The customer's address and telephone number would have to be obtained from the End User Ordering System, and AT&T would have to "dip" multiple databases, including the LERG (NPA-NXX to Rate Center relationship) and CRANE (Rate Center(s) to local calling area relationship), to make this determination. Then, AT&T may have to determine which FX-like arrangements are used for ISP-bound versus voice traffic, depending on the resolution of Issue Intercarrier Compensation 2(b). Going forward, this information would have to be obtained and entered into the End User Ordering System by the service representatives as part of the service order process. AT&T's End User Ordering System would need to be enhanced to identify separately FX-like customers and to house the customer information needed by downstream systems to properly apply or not apply reciprocal compensation. For example, the data would need to include both the customer's

[36] See SBC Initial Brief, pp. 221-222, where SBC asserts, with no supporting record evidence (which is not a surprise, since none exists) that AT&T has "some ability to" track these calls.

assigned telephone number(s) and a translation telephone number associated with the Rate Center serving the customer's physical location. AT&T would need to create a table of FX-like telephone numbers and related information and update such table daily for uploading to AMPS via the common reference tables maintained by CRANE.

Second, AT&T would have to modify its AMPS billing systems to accept this table and process usage appropriately

The costs for these significant modifications were provided, in unrebutted testimony, to be extraordinarily high. (Id., pp. 36-37) That is why AT&T proposed, as part of Intercarrier Compensation Issue 2d, a factor methodology.

Moreover, if AT&T's factor methodology is adopted, SBC's audit language is completely unnecessary, because it could be construed by SBC Illinois to require such data even when AT&T uses a factor approach such as what SBC Illinois itself proposes in Sections 21.7.3 and 21.7.3.1. SBC's audit proposal is doubly unnecessary given the fact the audit provisions in Article 1, General Terms and Conditions, Section 32, provide the parties with adequate audit rights and remedies, and that separate, audit provisions for FX and FX-like traffic are simply not necessary. Each party's rights are adequately protected in Section 32. Therefore, the Commission should reject SBC's proposed language in Sections 21.7.2.1 and 21.7.2.2.

Intercarrier Compensation Issue 4:

> **AT&T Issue: What classes of traffic should be excluded from reciprocal compensation under this Article?**
>
> **SBC Issue: Should Information Access traffic and Exchange Services for such access be defined as traffic exempted from reciprocal compensation?**

SBC Illinois' position appears to be based upon a fundamental misreading of the law. SBC contends that all information services traffic is not subject to reciprocal compensation.

(SBC Init. Br., p. 225) As AT&T stated in numerous places in its Initial Brief, not all information services traffic is subject to the Section 251(g) carve out, as the D.C. Circuit Court of Appeals found.[37]

SBC's proposal seeks to unilaterally impose on AT&T what SBC deems applicable Commission or FCC orders generically exempting additional kinds of calls from reciprocal compensation. AT&T addressed this contention in detail in its initial brief. (See AT&T Init. Br., pp. 253-257)

One additional point needs to be made: SBC's language is completely redundant and therefore unnecessary, given the change in law language to be contained in the interconnection agreement. If there is a change in law, then the parties are obligated to incorporate it. SBC's language, however, goes much further, which is not surprising given its true agenda. SBC's agenda is to fight at every opportunity AT&T's right to continue to be compensated for its costs of terminating calls originated by SBC's customers. SBC's language allows SBC to contend that various unrelated FCC and/or Commission decisions somehow apply, and reduce its payments. Thus, SBC's agenda is to unilaterally lower its payments upon certain orders being issued that SBC alone interprets changes its responsibilities, and AT&T loses its rights to contest this action pursuant to the Agreement's change in law processes. SBC's language is little more than an invitation to engage in anti-competitive "self-help", and it should be rejected for this reason alone.

Intercarrier Compensation Issue 7: If the originating Party passes CPN on less than 90% of its originating calls, should those calls passed without CPN be billed as intraLATA switched access or based on a percentage local usage factor (PLU)?

[37] See, e.g., AT&T Initial Brief, pp. 231-233; *WorldCom, Inc. v. FCC*, 288 F. 3d 429 (2002).

AT&T addressed this issue in detail in its Initial Brief. (See AT&T Init. Br., pp. 258-262) It should be emphasized that SBC contends that "other state commissions have resolved this issue as SBC Illinois proposes that it be resolved here." (SBC Init. Br., p. 231) SBC "conveniently" omits the FCC's decision in the *Virginia Arbitration Decision*, supporting a CLEC proposal that is virtually the same as what AT&T proposes here. (See AT&T Init. Br., pp. 261-262)

Intercarrier Compensation Issue 8(b)

> **AT&T Issue: Do AT&T's switches meet the requirements of 47 C.F.R. 51-711(a)(3), such that SBC Illinois-Illinois shall compensate AT&T for termination at the tandem rate?**
>
> **SBC Issue: Should AT&T be entitled to a single rate element which includes tandem rate element, even though the tandem may not be used?**

Since its Initial Brief was filed, it has come to AT&T's attention that SBC settled this issue with MCI in its recent Michigan arbitration case, Michigan Public Service Commission ("MPSC") Case No. U-13758. In a June 26, 2003 Decision of the Arbitration Panel: the following was decided:

> **ISSUE 106. Should Reciprocal Compensation rates be billed symmetrically regardless of whether traffic is terminated at a tandem or directly to an end office?**
>
> The parties notified the Panel that this issue has been settled. Therefore, the Panel did not arbitrate this issue.
>
> **ISSUE 107: If MCIm is permitted to charge tandem serving rates for a single switch, should MCIm be permitted tandem transport facility and mileage charges between tandem and end offices, and for what mileage?**
>
> The parties notified the Panel that this issue has been settled. Therefore, the Panel did not arbitrate this issue.

According to a public communication made between counsel for SBC and the parties in MPSC Case No. U-13758, the issue was settled by SBC agreeing to MCI's proposed language: "In fact,

I am authorized to report on behalf of SBC Michigan (and to inform counsel for MCIm by copy of this note) that Issues 106 and 107 are now resolved. On both of these issues, SBC Michigan accepts MCIm's language."[38] MCI's language proposed in Michigan is:

> 4.1.1 Where an MCIm switch serves a geographic area comparable to the area served by an Ameritech-Michigan tandem switch, MCIm shall also charge Ameritech-Michigan for tandem switching at the rate set forth in Appendix Pricing.

Of course, this language memorializes AT&T's entire position on this issue, and it is frankly disheartening that SBC appears to think it can game the Commission here by contesting something it settled a few weeks ago in Michigan.

As the Commission knows, today AT&T's switch is classified as a tandem for reciprocal compensation purposes. In support of its position that its switches remain tandems, AT&T presented considerable factual evidence, including network maps showing the coverage of its switches.[39] What was SBC Illinois' response to all of this evidence? ***Nothing***. SBC submitted no factual evidence whatsoever supporting its theory that AT&T's switches no longer should be considered tandems. Indeed, SBC even agrees with AT&T's factual evidence: "The parties and Staff also agree that AT&T has shown that its switch *is capable of serving* a geographic area comparable to the area served by SBC Illinois' tandem switch." (SBC Init. Br., p. 233)

SBC, however, has decided that AT&T needs to make an additional showing that is neither contemplated nor authorized by federal law. SBC Illinois contends that AT&T has to

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[38] See, May 16, 2003 E-mail from SBC counsel Dennis Friedman, Attachment 1 hereto. Pursuant to 83 Ill. Adm. Code 200.640, AT&T requests administrative notice be taken of this e-mail. This e-mail is a public document sent in an MPSC case. It is admissible as an admission of a party opponent. It is relevant to the Commission's decision here on Intercarrier Compensation Issue 8(b), since a few weeks ago in Michigan SBC took a directly contrary position on the same issue that is in contention here.

[39] See AT&T Ex. 2.0, p. 158, and AT&T Exs. 2.7 – 2.10.

show the exact location of its customers, something that is entirely unsupported by the FCC's rules.

As discussed in great detail in its Initial Brief, AT&T has introduced evidence that it deployed switches to serve areas comparable to those areas served by SBC's tandem switches. In particular, as the FCC's rule contemplated CLECs would do, AT&T demonstrated that it deployed switches and obtained transport or "dedicated access" facilities to connect the switches to SBC end offices and to customers, so that AT&T's switches occupy a position in the network that is comparable to SBC's tandems, which are also linked via transport to end offices. (AT&T Init. Br., pp. 262-272) With respect to the geographic coverage of the switches, AT&T explained that it is capable of providing services to every person within its service area and has established a network that serves a geographic area at least as wide as SBC. (Id.) Using testimony and maps demonstrating the areas that AT&T's switches served and comparing those areas to the areas served by SBC's tandem switches, AT&T explained that its switches serve customers throughout an area "the same or greater than" that served by each of SBC's tandem switches in Illinois. (Id.) AT&T thus claimed it was entitled to charge SBC a rate equal to SBC's tandem rate.

The Staff agrees. According to Staff, "it is clear from the FCC's rules and the FCC's Intercarrier Compensation NPRM that whether or not AT&T is entitled to the tandem interconnection rate can be determined based on the geographic area served by AT&T's switches." (Staff Init. Br., p. 96) Staff criticized SBC's theory that the FCC's rules can be ignored and that AT&T has to somehow replicated the inefficient incumbent network design (complete with tandem switches subtending end office switches, something no CLEC ever has done) in order to receive tandem treatment:

> SBC has, however, proposed language that does not permit AT&T to charge SBC's tandem rate for traffic AT&T terminates unless AT&T's terminating traffic flows through an actual tandem. Thus, under SBC's proposal the interpretation of the FCC's rule regarding geographic service areas is irrelevant. For example, if AT&T deployed a switch for each of SBC's tandems that served every existing SBC customer currently served by each of SBC's tandems, AT&T would not, under SBC's proposed language, be able to charge the tandem rate unless it used tandem switches. (Id.)

The Commission should heed the Staff's cogent testimony on this issue, since it is clear SBC's theory has nothing to do with the FCC's governing rules, but all to do with its seven-year campaign to not pay AT&T tandem reciprocal compensation when its switches perform this function.

As Staff points out, SBC clearly misreads the FCC's governing rules. Rule 711(a)(3) requires AT&T to show that its switches "serve a geographic area" comparable to that served by SBC's tandems. By its plain terms, the Rule does not require AT&T to show that its switches "serve customers" in areas comparable to those served by SBC's tandems. And a CLEC can show that it "serves a geographic area" without disclosing the locations of its customers by demonstrating, as the text of the *Local Competition Order* (par. 1090) suggests, that it has deployed its network in a manner that allows it to terminate traffic from SBC's customers over an "area" comparable to the territory to which SBC's tandems terminate traffic.[40]

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[40]The Florida Commission, illustrating this principle, analogized the difference between a CLEC's service of "geographic area" and service of customers to a landscaping business:

> A particular landscaping company could advertise that it serves Tallahassee and the surrounding area. Of course, this company may not have customers within every neighborhood of this area, but it is capable and prepared to serve anyone within each of these neighborhoods. In other words, this company has invested in the equipment necessary to serve any prospective customer within each of these neighborhoods. The number and location of customers that actually subscribe to this company's service will vary depending upon marketing success, but that does not change the fact that Tallahassee is the *area* it *serves*.

In fact, as discussed in AT&T's Initial Brief, the FCC has itself recently confirmed that Rule 711(a)(3) does not require, as SBC claims here, that a CLEC must provide evidence of its customer locations in order to qualify for the tandem rate. In July, 2002, the FCC conducted an arbitration proceeding between Verizon and AT&T and another carrier for the state of Virginia. In that arbitration, Verizon raised precisely the same legal argument that SBC raises here, claiming that Rule 711(a)(3) requires that "competitive LECs must demonstrate that their switches are actually serving, rather than merely capable of serving, a geographic area comparable to that of Verizon's tandem," and that "'[a]t best, AT&T has shown that its switches may be *capable of serving* customers in areas geographically comparable to the areas served by Verizon's tandems."[41]

The FCC expressly rejected this claim, and found that under Rule 711(a)(3) the "determination whether a competitive LEC's switch 'serves' a certain geographic area does not require an examination of the competitor's customer base." *Virginia Arbitration Decision*, par. 309. Rather, the FCC "agree[d] with AT&T . . . that the requisite comparison under the tandem rate rule is whether the competitive LEC's switch is capable of serving a geographic area that is comparable to the architecture served by the incumbent LEC's tandem switch." Id.

Order On Reciprocal Compensation, *In re Investigation into appropriate methods to compensate carriers for exchange of traffic*, 2002 WL 31060525, at *8 (Fla. PSC Sept. 10, 2002) ("*Fla. PSC Reciprocal Compensation Order*").

[41] See *Virginia Arbitration Decision*, 17 FCC Rcd. 27039, par. 309. The Chief of the FCC's Wireline Competition Bureau conducted the arbitration and issued the order, but under FCC rules, the Commission's staff, when acting on delegated authority (as here), has "all the jurisdiction, powers and authority conferred by law upon the Commission," and "any action taken pursuant to delegated authority shall have the same force and effect . . . as actions of the Commission." 47 C.F.R. § 0.203. Thus, the Commission should reject SBC's red herring contention that this decision should be ignored (or treated with little deference) since it somehow did not come from the actual commissioners. (SBC Init. Br., pp. 238-239) This was, indeed, the FCC's decision as a matter of law.

The FCC's interpretation of its own regulations is obviously entitled to great deference,[42] and the FCC's holding compels rejection of SBC's claim. That interpretation plainly makes sense and serves the goals of the 1996 Act. The entire purpose of an interconnection agreement is to allow CLECs to *gain* customers. To forbid CLECs from charging a reciprocal compensation rate equal to that charged by the ILEC unless they could show that they had already won a geographically dispersed customer base would run squarely contrary to the Act's goals to encourage local competition by every legally possible means. *Verizon*, 535 U.S. at 489. As the FCC's *Virginia Arbitration Decision* concluded, Rule 711(a)(3) does "not depend upon how successful the competitive LEC has been in capturing a 'geographically dispersed' share of the incumbent LEC's customers." Id. That standard would "penalize new entrants," because the CLEC necessarily serves far fewer customers and deploys its facilities in a different manner than the incumbent LEC. A CLEC could never show that it will serve the same number of customers over the same geographic area as the monopoly ILEC now serves, which would in practice forever deny CLECs the ability to collect the same tandem rate that CLECs will be paying to the ILEC. The number of customers that AT&T wins is also irrelevant to the appropriate rate because SBC pays AT&T the tandem rate only to the extent that SBC's customers actually call AT&T's customers.

Further, the FCC found that its interpretation of Rule 711(a)(3) is both consistent with its text and far easier to apply than the rule advocated here by SBC. Like Verizon in the FCC case, SBC never describes how many or how dispersed a CLEC's customers would have to be before being deemed comparable to the ILEC. (See SBC Init. Br., p. 17) Indeed, the *Virginia Arbitration Decision* found that the "customer dispersion" rule proposed by Verizon had no

[42]See *U.S. West Comm.* v. *Washington Utils. & Transp. Comm'n*, 255 F.3d 990, 998 (9th Cir. 2001).

"specific standard" that could easily be applied by state commissions.[43] The FCC's rule sensibly avoids those dilemmas by using service of a geographic area as an "appropriate proxy." *Local Competition Order*, par. 1090.

Given the FCC's recent interpretation of Rule 711(a)(3), the few cases cited by SBC in support of its claim that AT&T was required to introduce evidence of customer location would be irrelevant even if they were on point, for all of them pre-date the FCC's *Virginia Arbitration Decision*. But those cases are plainly inapposite. In *MCI* v. *Michigan Bell*, 79 F. Supp. 2d 768, 791 (E.D. Mich. 1999), the court approved the state commission's use of the end office rate because the CLEC was not even authorized by the state commission to provide service in areas served by the incumbent's tandem, and thus the CLEC's switch could not possibly have the same geographic reach. For that reason, the CLEC had to rely on a claim that it "will *soon* have authority" to serve a comparable geographic area, which is insufficient. Id. at 791.[44] In this case, however, the Commission has authorized AT&T to offer service in all relevant areas, and no party has offered evidence disproving AT&T's showing that its switches are capable of serving every area served by SBC's tandems.

SBC also relies on the unpublished decision in *MCI* v. *Illinois Bell*, 1999 WL 1893197, **6-7 (N.D. Ill. June 22, 1999), where the court upheld the Commission's factual finding that the end office rate was appropriate because the CLEC "expressly refused" to introduce any

[43] *Virginia Arbitration Decision*, par. 309; see also *Fla. PSC Reciprocal Compensation Order* at *7. Likewise, SBC also proposed no specific standard that would allow CLECs to show that their customers are sufficiently dispersed in a manner that would be comparable to the ILECs' customer dispersion patterns.

[44] Further, the Michigan Public Service Commission has in a later case, on different evidence, determined that the tandem rate was appropriate. See *Michigan Bell Tel. Co. v. Airtouch Cellular, Inc.*, 2002 WL 551043, at **3-4 (E.D. Mich. March 27, 2002) (affirming MPSC determination). The court's holding in *Michigan Bell* is thus limited to the unusual facts in that case, which are indisputably not present here.

"empirical data" on its switches' geographic reach. Notably, the court cited findings of the Commission that distinguished MCI from another carrier – which was AT&T's affiliate TCG – that had demonstrated that it was entitled to the tandem rate. Id. TCG had introduced evidence that included "a map showing geographically widespread deployment of various nodes in its network" (Id.) – precisely the same type of evidence that AT&T introduced here. Thus, by recognizing that state commissions may properly rely on the evidence of network coverage like that relied on by AT&T here, *Illinois Bell* fully supports AT&T's and the Staff's position.

Even if these scattered decisions were relevant, SBC never discusses or attempts to refute the numerous federal court cases that are adverse to its position and that have affirmed a state commission's determination that the tandem rate is appropriate. Indeed, another court of appeals addressed this issue and reversed a state commission that had awarded only the end office rate to a new entrant. See *U.S. West Comm.* v. *Washington Utils. & Transp. Comm'n*, 255 F.3d 990, 998 (9th Cir. 2001). After holding that the state commission decision, which was based on its finding that the new entrant's switch functioned like the incumbent's end office switch, was inconsistent with the Act and Rule 711(a)(3), the court agreed that the record showed that the new entrant's switches "serve a geographic area comparable to the area served by [the ILEC's] tandem switches." Id. at 996-98. Even though the court nowhere discussed evidence of customer locations, the court directed the entry of judgment for the new entrant, and the payment of the tandem rate. Id.

In other cases as well, including very recent cases regarding SBC's affiliates in Indiana and Ohio, federal courts have repeatedly affirmed state commissions (as this Commission did for AT&T/TCG previously) that awarded the tandem rate. See *Indiana Bell v. McCarty*, 2002 WL 31803448 (S.D. Ind. 2002); *MCI Telecommunications Corp. v. Ohio Bell*, Case No. C2-97-721

(S.D. Ohio 2003); *U.S. West Comm. v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124 (9th Cir. 1999); *U S West Comm. v. Minnesota Pub. Utils. Comm'n*, 55 F. Supp. 2d 968, 979 (D. Minn. 1999); *U.S. West Comm. v. Pub. Serv. Comm'n of Utah*, 75 F. Supp. 2d 1284, 1290 (D. Utah 1999), *abrogated on other grounds as discussed in Southwestern Bell Tel. v. Apple*, 309 F.3d 713, 717 n.5 (10th Cir. 2002); see also *Airtouch Cellular, Inc.*, 2002 WL 551043, at **3-4. In none of these cases did the courts require the new entrant to introduce evidence of its customer locations before affirming the award of the tandem rate.

Under these decisions and the FCC's orders, AT&T's evidence easily satisfy the requirement of Rule 711(a)(3) that its switches serve a geographic area comparable to that served by SBC's tandems. SBC's arguments should be rejected.

Intercarrier Compensation Issue 9: Shall SBC-Illinois be required to make available to AT&T comparable compensation arrangements as those between SBC and other incumbent local exchange carriers and competitive local exchange carriers?

SBC has intentionally blown this issue way out of proportion. SBC claims that AT&T's proposed language allows it to "opt into other carriers' reciprocal compensation arrangements will-nilly." (SBC Init. Br., p. 242) Staff, unfortunately, also opposes AT&T's proposal as revised in its reply testimony. (Staff Init. Br., pp. 98-99)

SBC is misstating AT&T's proposal, and more importantly, ignoring the actual proposed language. AT&T proposes the following language:

> 21.3.7 SBC will make available to AT&T a compensation arrangement THAT PROVIDES LOWER COMPENSATION RATES, INCLUDING BILL AND KEEP, for serving customers in any optional or mandatory, one way or two way EAS, including ELCS, area serviced by an ILEC or CLEC other than AT&T, that is similar to the corresponding arrangement that SBC-Illinois has with that other ILEC or CLEC for serving those customers when AT&T is similarly situated to the other ILEC or CLEC.

AT&T's language is, as is all interconnection agreement language, subject to the strictures of the law, including Section 252(i) and the FCC's "pick-and-choose" rules. (47 C.F.R. § 51.809) Hence, it is simply wrong to claim that AT&T's proposal somehow negates the law. AT&T's proposal is clearly consistent with Section 252(i) in that it allows AT&T to opt into other carrier interconnection agreements to avoid SBC placing AT&T in a price squeeze. Thus, all that AT&T's revised proposed language allows is to protect AT&T from discrimination. It is intended only to be used where AT&T obtains customers from SBC who are located in exchanges with extended area service ("EAS") or extended local calling service ("ELCS") arrangements. Not allowing AT&T this opportunity means that consumers changing carriers somehow are now no longer subject to the reciprocal compensation arrangements existing between SBC and the other ILEC, and now such calls are considered long distance calls. As was discussed in greater length in AT&T's Initial Brief, this proposed language merely prevents this kind of blatant discrimination from occurring, and nothing more. (See AT&T Init. Br., pp. 272-277) AT&T's proposal, then, is completely consistent with Section 252(i), and indeed exists to prevent *illegal* discrimination from occurring. AT&T requests that its proposal be adopted.

Intercarrier Compensation Issue 10(a): Should 8YY traffic compensation be determined by the jurisdiction of the traffic?

Intercarrier Compensation Issue 10(b): Should the 8YY service provider be required to suppress billing of terminating charges to the originating carrier, and provide a report of the traffic suppressed?

As is discussed below, AT&T's proposal is entirely consistent with industry practice and current technology. (See also AT&T Init. Br., pp. 277-281) SBC's brief makes a number of highly inaccurate assertions to the contrary that are addressed below.

When a call originates, the 800 database dip from the end office can return a POTS (plain old telephone service) routable number. Sometimes the returned number is within the same local

calling scope and as such is in essence, a local call, not an interexchange call. Indeed, the local jurisdiction can be determined from the call records. SBC does not deny this.

SBC's call to rely on "industry standard" intercarrier compensation arrangements is rooted in the past tradition of relying on and calling all compensation passing between carriers "switched access." (SBC Init. Br., p. 246) As was discussed in AT&T's Initial Brief, the whole realm of intercarrier compensation has been dramatically transformed since the enactment of the Telecommunications Act of 1996.

SBC reaches back even farther into history in claiming that access charges ought to apply because of some supposed requirement to "share" revenues. (SBC Init. Br., p. 245) The concept of division of revenues dates back to long before the 1984 break-up of the Bell System. The division of revenues effectively ended at AT&T's divestiture of SBC and its "Baby Bell" brethren. Notably, access charges have declined over the years since 1984 and regardless of how they were set in 1984, and the concept of revenue sharing is wholly divorced from access charges today. In addition, AT&T is wholly unaware of any Commission approval of retail 800 tariffs that expressly suggests that the rates established contemplate revenue sharing. Indeed, since 8YY services are considered competitive services in Illinois, there is little regulation of how rates are set.

SBC's assertion that AT&T could falsely classify all 8YY calls as local through the assignment of POTS numbers is wrong and far-fetched. (SBC Init. Br., p. 247) SBC's theory suggests that AT&T might assign "each customer a POTS number from every local calling area" and then as calls come in to an 800 number, "they would be mapped as having come to the POTS number that corresponds to the local area from which the call came." (Id.). This is wild fantasy. Based on the FCC's "Trends in Telephone Service" (dated May 2002) as of April 2002, there

were approximately 22.6 million working toll-free numbers in service. In Illinois alone there are hundreds of distinct local calling areas, suggesting that across the nation there may be well over ten thousand local calling areas. Thus, in order to operationalize SBC's hypothetical access avoidance scheme, ***each*** toll free number would need to be associated with 10,000 or more local numbers for a total of some 226 ***billion*** POTS-routable local numbers. Needless to say, pulling off such a scheme would be impossible.

SBC has failed to put forward any showing of the supposed cost savings and competitive advantage from its proposal, so its claims that AT&T's proposal somehow would confer an unfair advantage must be rejected for lack of evidence. No comparison of switched access versus reciprocal compensation was offered. Comparison would need to be made between interstate switched access or intrastate switched access and reciprocal compensation under three distinct scenarios – ULS-ST Reciprocal Compensation, facilities-based standard Reciprocal Compensation, and Reciprocal Compensation under the FCC ISP default scenario. None of these comparisons have been made. No identification of the supposed amount of savings possible to AT&T was made.

Finallly, SBC claims the Commission already ruled its way in the *Global Naps* proceeding, Docket No. 01-0786. Yet, as SBC later grudgingly admits, the 8YY issue in fact never even arose in that docket. (SBC Init. Br., pp. 246-247) In sum, the Commission should accept AT&T's proposed language.

Intercarrier Compensation Issue 11: Should SBC Illinois be permitted to impose a limit on AT&T tariffed exchange access rates in the local Agreement?

AT&T's Initial Brief addressed this issue in detail. (See AT&T Init. Br., pp. 281-283) AT&T merely adds its observation that SBC's proposal to tie AT&T's carrier access rates to its

own charges is inconsistent with how adjacent LECs in Illinois have operated for decades. Today, SBC certainly cannot force other ILECs such as Verizon, Citizens, and Gallatin River, to name a few, to "cap" their access charges at the level of SBC's. If SBC has a specific complaint with AT&T's carrier access rates (which it never once raised in this case), the proper forum to raise the issue is in a complaint proceeding, not in an interconnection arbitration where access rates are not even at issue under Sections 251 or 252 of the Act. Moreover, against this backdrop, the TDS arbitration decision (Docket 01-0338) cited by SBC (SBC Init. Br., p. 249) is not persuasive authority for this case. Unlike AT&T, TDS was a new entrant into the Illinois market, and was proposing language under which it could charge SBC an access rate that was not tariffed, and which was "unstated". (Order in Docket 01-0338, p. 49) In contrast, here AT&T is proposing to bill SBC at its established, tariffed access rates, which SBC has not challenged. Accordingly, the Commission should adopt AT&T's position to resolve this issue.

Intercarrier Compensation Issue 12: Should combined traffic on the Feature Group D trunks be jurisdictionally allocated for compensation purposes?

This is one of the issues that should never have been arbitrated, given the fact that SBC voluntarily agrees to this methodology in six of its states. Nevertheless, SBC stridently opposes AT&T's proposal, and indeed offers a whole host of arguments on this issue. Most have already been addressed in AT&T's Initial Brief at pages 284-289, but few will be responded to here.

SBC claims confusion arises between AT&T's testimony and its proposed language: "Whose trunks are we talking about, ATTCI's (the local exchange carrier) or AT&T the long distance company?" (SBC Init. Br., p. 254) This contention is, of course, mere sophistry, since AT&T is both a long distance carrier and a local telephone company.[45]

[45]SBC also asserts, again one must assume with tongue firmly in cheek: "AT&T seems to forget that this interconnection agreement is between SBC Illinois and AT&T the CLEC, not AT&T

SBC also claims that AT&T's proposal:

> (1) is in conflict with agreed methods for exchanging local and intraLATA toll traffic between the parties' end users; (2) would improperly affect SBC Illinois' arrangements with IXCs; (3) would cause unnecessary billing disputes; and (4) is a less accurate manner to account for the subject traffic than the method the parties are currently using. (SBC Init. Br., p. 255)

SBC's claim is highly disingenuous, given the fact that SBC has voluntarily agreed to AT&T's proposed methodology, and it has been in operation for years without complaint, in California, Nevada, Missouri, Kansas, Arkansas, Oklahoma, Texas, and Connecticut. (Also, this methodology is in place in Verizon, throughout BellSouth and in the Qwest states of Arizona, Idaho, New Mexico, Utah and Montana. (See AT&T Ex. 2.0, p. 173)) SBC never once discusses any specific issues its affiliates in these eight other states have had with AT&T's proposal – for the simple reason that no problems have ever arisen.

SBC also asserts as support for its proposal that it has won this issue repeatedly, citing the MCI and Sprint arbitration decisions from over six years ago. (SBC Init. Br., p. 253) Since that time, however, SBC has voluntarily implemented in most of its states AT&T's exact proposal here, so it is unclear why these arbitration decisions are that important.[46]

The MCI and Sprint 1997 decisions are, in any event, distinguishable. These decisions were based on the Ameritech contention that it would be hard to bill for this type of arrangement, the billing arrangements were not commercially reasonable or cost effective, and would require

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operating as an IXC. AT&T the IXC is a separate legal entity and is not a party to this interconnection agreement." (SBC Init. Br., p. 255) Of course, had SBC bothered to check, it would have discovered that AT&T and TCG are certified as local *and* long distance providers and they will be the AT&T and TCG parties to this agreement. There is no separate "AT&T the IXC."

[46]One cannot help but be struck by the irony that SBC trots out the MCI and Sprint 1997 arbitration decisions to support this one argument, but regarding Intercarrier Compensation Issue 8(b) ignores the Commission's 1997 arbitration decision finding that AT&T and TCG should be classified as tandems for reciprocal compensation purposes.

extensive modification of Ameritech's systems. Since local competition was new in 1997, MCI and Sprint[47] were not able to counter these arguments with actual example of combining Local, IntraLATA toll and InterLATA toll over the existing FG-D trunks. Since 1997, however, AT&T can now show a five-year history of this arrangement in the rest of the country, as noted above. SBC is aware of this since for the last five years and through two generations of ICAs the parties have voluntarily combined Local/IntrLATA and InterLATA traffic over FG-D trunks in eight states. So now there is an extensive track record of using the existing FG-D trunks for multi-jurisdictional traffic and billing in the manner advocated by AT&T. AT&T therefore respectfully requests that the Commission adopt its proposed language.

[47]SBC cited three decisions: the Commission's original Section 271 case, the first MCI arbitration and the first Sprint arbitration. No other supporting case was cited.

IX. COMPREHENSIVE BILLING ISSUES (ICA ARTICLE 27)

Comprehensive Billing Issue 1: Should CABS billing be used when the OBF has established guidelines for its use?

SBC Illinois argues that its Resale Billing System ("RBS") is "wholly adequate" for billing for Operator Services and Directory Assistance ("OS/DA"); that there is no evidence other CLECs want to switch OS/DA billing to CABS; that the Ordering and Billing Forum ("OBF") guidelines are non-binding; and that AT&T provided no evidence to substantiate its position that the receipt of bills from multiple SBC billing systems makes bill validation more difficult. (SBC Init. Br., pp. 262-265) Staff, while "agree[ing] with AT&T's statement that a uniform billing system would be more consistent and beneficial to CLECs," argues that SBC should not be required to switch OS/DA billing to CABS without an analysis of the costs involved; that AT&T did not provide a "quantitative" analysis of the impacts to it of receiving separate SBC Illinois bills in separate formats; and that this issue should be raised in an industry forum. (Staff Init. Br., pp. 97-102) None of these arguments overcome the wisdom of requiring SBC Illinois to provide its OS/DA billing in CABS format, as it does for other UNEs.

As the Commission is aware, SBC switched its billing for other UNEs to CABS in the face of strong industry demand -- the industry was not finding SBC's old billing systems to be "wholly adequate." While, as Staff points out, the conversion of other UNEs to CABS billing was not trouble-free (Staff Init. Br., p. 100), nonetheless, it can be expected that SBC can apply the "lessons learned" from that transition to accomplishing a smoother transition of OS/DA billing to CABS.[48] Further, while Staff suggests that AT&T should raise the question of whether

[48]SBC contends that the fact that OS/DA billing is already done in CABS in the SBC-SWBT region is "irrelevant." (SBC Init. Br., p. 264) To the contrary, the fact that SBC provides OS/DA billing in CABS in the SWBT region demonstrates that SBC enjoys the benefit of the experience of converting OS/DA billing to, and administering it in, CABS, which should support

OS/DA billing should be converted to CABS in an industry forum, the OBF **is** an industry forum, with a specific focus on ordering and billing issues. (AT&T Init. Br., p. 290, note 127) Indeed, as Staff points out, "national guidelines for CABS billing have been in place for some time for OS and DA charges." (Staff Init. Br., p. 102) In fact, the use of CABS billing is common throughout the industry (as well as being used extensively within the SBC family of companies). (AT&T Ex. 3.0, p. 10) Since AT&T's specific ICA language proposal (Sections 27.1.3 and 27.4.4.2) is that SBC should be required to use CABS billing for those charges and services for which the OBF has developed guidelines (see AT&T Init. Br., p. 290), AT&T is only proposing that CABS billing be required where an industry forum has already studied the use of CABS for the particular services and established guidelines for billing the services via CABS.[49]

The contention that AT&T did not provide sufficient analysis of the impacts to it of continuing to receive OS/DA bills in RBS format while other charges and services are billed in CABS is ill-founded. AT&T witness Karen Moore testified that SBC's continued use of RBS to bill OS/DA requires AT&T to incur unnecessary expenses that include set up and maintenance processes to validate the charges billed under this non-CABS billing system; that validation of SBC's OS/DA bills from its RBS can only be accomplished on a manual basis, whereas if OS/DA bills were formatted in CABS and delivered electronically, the validation could be performed electronically; that the use of multiple billing systems increases the difficulty of the bill validation processes for AT&T and increases the resources and time that AT&T must expend to validate a bill; and that receipt of CABS-formatted bills for as many services as possible, as

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a more efficient and successful conversion and operation in the SBC Midwest region. We also have a vague recollection that one of the benefits of the SBC-Ameritech merger was supposed to be the importation of SBC's "best practices" in to the Ameritech region.

[49]In the context of this case, OS/DA are the only services not already billed by SBC in CABS for which CABS billing would be required by AT&T's proposed language.

opposed to receipt of bills generated by multiple billing systems and formats, would reduce the drain on AT&T's resources to verify and process bills received from SBC Illinois. (AT&T Ex. 3.0, pp. 10, 12) SBC's assertion that AT&T presented "no evidence to substantiate" its allegations (SBC Init. Br., p. 264) ignores the law that sworn testimony is competent evidence in Commission proceedings. See *Commonwealth Edison Co. v. Commerce Commission*, 322 Ill. App. 3d 846, 851-53 (2d Dist. 2001).

In summary, the Commission should adopt AT&T's proposed language for Sections 27.1.3 and 27.4.4.2 of the ICA, thereby requiring SBC Illinois to bill OS/DA in CABS format, consistent with its billing of other UNEs.

Comprehensive Billing Issue 2: Should the Billed Party have the discretion to designate a changed billing address for different categories of bills upon 30 days written notice to the Billing Party?

AT&T relies on its Initial Brief (pp. 294-296) on this issue, which fully addressed the arguments raised in the initial briefs of SBC (pp. 266-67) and Staff (pp. 102-104). In summary, the Commission should adopt AT&T's proposed language for Section 27.2.1.3 of the ICA, which will enable AT&T to designate different AT&T addresses to which different SBC Illinois bills should be sent.

Comprehensive Billing Issue 3: Must SBC provide the OCN of an originating carrier to AT&T operating as a facilities based carrier, when the originating carrier is utilizing SBC's switch on an unbundled basis?

SBC argues that a report it proposes to provide AT&T, showing originating carrier information by ACNA (rather than OCN), should meet AT&T's acknowledged need (see SBC Init. Br., p. 269) to be provided the identity of the originating carrier for traffic that transits SBC's switch and is terminated by AT&T. (Id., pp. 269-70) However, SBC fails to mention the principal deficiency of the report it proposes to provide, which is that the report will only provide

total terminating minutes of use in the billing period for each originating carrier and will not provide individual call detail. (Tr. 190-191) AT&T believes that because this report only provides total terminating minutes of use by ACNA, and not individual call detail, it is insufficient to support AT&T's billings to the originating carriers (including providing a basis to support audits of those bills). (AT&T Init. Br., p. 299)

SBC claims that in order to provide originating carrier OCN information to AT&T, SBC would have to initiate a "time-consuming" project of "unknown" cost. (SBC Init. Br., p. 270) As AT&T discussed in its Initial Brief, since SBC has also argued that the OCN information is readily available to AT&T as well as to SBC through SBC's Line Information Data Base ("LIDB"), there would be no need for SBC to undertake an allegedly time-consuming and costly project in order to be able to provide originating carrier OCN information to AT&T. (AT&T Init. Br., pp. 298-99) Indeed, SBC should have a "head start" here since it already owns and maintains the LIDB. Further, as discussed in the sections of this Reply Brief on UNE Issues 17 and 28, Staff has concluded that SBC did not substantiate its contention that OCN information was readily available to AT&T at reasonable cost through access to SBC's LIDB, and that therefore SBC should be required to supply originating carrier OCN information to AT&T at no cost. (See Staff Init. Br., pp. 65-66)

AT&T wishes to re-emphasize that this issue involves identifying CLECs who are sending traffic to AT&T using unbundled switching purchased from SBC, a service for which SBC receives revenues from those CLECs. As between AT&T and SBC Illinois, only SBC Illinois knows what carriers are operating in its switches. Accordingly, SBC Illinois should obtain, and provide to AT&T, the OCNs of carriers using unbundled switching leased from SBC that originate local traffic that AT&T terminates using its own switch. Alternatively, if SBC

does not provide AT&T with the OCN of an originating carrier that uses SBC's unbundled switching and sends calls to AT&T for termination, then AT&T should be entitled to treat those unidentified calls as though originated by SBC Illinois for purposes of billing for termination. (AT&T Ex. 3.0, p. 17) This would be a reasonable outcome, because SBC knows the identity of the originating carrier that is using its unbundled switching, and can bill that carrier and be made whole. The Commission should adopt AT&T's proposed contract language for Section 27.10.3 of the ICA.

Comprehensive Billing Issue 4

A. Should SBC-Illinois be required to provide to AT&T the OCN of 3rd party originating carriers when AT&T is terminating calls as an unbundled switch user of SBC-Illinois?

B. Should SBC-Illinois be billed on a default basis when it fails to provide the 3rd party originating carrier to AT&T when AT&T is terminating calls as the unbundled switch user?

This issue is essentially the same issue as UNE Issues 17 and 28. In its Initial Brief on this issue, AT&T advocated adoption of modified language that its witness, Karen Moore, had proposed in her reply testimony to Staff. (See AT&T Init. Br., p. 303) As discussed in the sections of this Reply Brief on UNE Issues 17 and 28, Staff, in its Initial Brief, proposed certain modified ICA language with respect to UNE Issue 17, which Staff indicated would also be applicable to Comprehensive Billing Issue 4. AT&T has indicated that with certain modifications (again, discussed above under UNE Issues 17 and 28), it can accept Staff's language. (The parties appear to be in agreement that UNE Issues 17 and 28 and Comprehensive Billing Issue 4 should be resolved in a consistent manner.)

SBC states that AT&T cannot object to not being provided originating carrier OCN information where it is "technically infeasible" for SBC to provide it. (SBC Init. Br., p. 272)

AT&T's only issue here is that it needs SBC to provide originating carrier OCN information for calls coming from or through the SBC Illinois switch that AT&T terminates. It is not AT&T's responsibility to instruct SBC as to the technically feasible way to accomplish this.[50]

Under Comprehensive Billing Issue 4(b), SBC argues that AT&T's contract language that would allow AT&T to bill SBC, as the originating carrier, for terminating any calls coming from SBC's switch for which SBC does not provide the originating carrier OCN, is an unlawful contractual penalty for breach and/or an improper liquidated damages provision.[51] (SBC Init. Br., pp. 276-78) SBC is wrong. This provision is not a remedy for breach of contract at all. It simply specifies who is deemed the originating carrier for purposes of being billed for terminating calls. Further, SBC fails to place the proposed language in proper factual context. Since this issue involves the situation in which AT&T is terminating traffic using unbundled local switching leased from AT&T (i.e., AT&T is operating as an unbundler in SBC's switch), all calls coming to AT&T will appear (to AT&T) as though they were originated by SBC.[52] (See AT&T Ex. 3.0, p. 15) SBC does not dispute that the originating carrier is obligated to pay the terminating carrier for terminating the call. (SBC Init. Br., p. 276) Therefore, unless SBC provides AT&T information identifying another LEC as the originating carrier of a call, it is

[50]Nonetheless, as discussed in AT&T's Initial Brief on this issue (pp. 301-303) and UNE Issues 17 and 28 and in this Reply Brief concerning UNE Issue 28, AT&T is willing to accept ICA language that recognizes the implementation of SBC's ULS Port OCN project.

[51]SBC states that AT&T's proposed sentence should not apply to calls for which SBC has no obligation to provide OCN information to AT&T. (SBC Init. Br., p. 276) SBC's obligation to provide originating carrier OCN to AT&T will be defined by this ICA, but it is AT&T's position that SBC should be required to provide originating carrier OCN for all calls originating in or coming through SBC's switch to AT&T for termination.

[52]In fact, given the relative proportions of the local service market presently served by SBC and by CLECs, a substantial majority of the local calls coming to AT&T for termination will in fact have been originated by SBC customers.

reasonable for AT&T to assume that the call was originated by SBC, and bill SBC for termination.[53] AT&T's proposed contract language reflects this reality.[54]

Moreover, SBC would not be penalized or damaged in this situation (as it suggests at page 277) by having to pay call termination charges to AT&T. Since SBC will know the identity of the originating carrier (even though AT&T does not) (Rev. AT&T Ex. 3.1, p. 3), SBC will be able to obtain reimbursement from the "true" originating carrier. SBC expresses concern that AT&T could achieve a double recovery if the "true" originating carrier eventually pays AT&T for call termination (SBC Init. Br., p. 278, note 70), but this is a virtual impossibility, since if AT&T does not receive the originating OCN information from SBC, AT&T will not know who the actual originating carrier is and will be unable to bill that carrier. In any event, in situations in which AT&T bills SBC as though SBC were the originating carrier, AT&T can provide SBC with whatever assignment of AT&T's rights that is appropriate to enable SBC to obtain reimbursement from the actual originating carrier.[55]

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[53] It would be absurd to conclude that AT&T has to file a lawsuit against SBC in this situation to get compensation. (See SBC Init. Br., p. 277)

[54]Indeed, SBC Illinois would be free to decide that it would be easier to accept AT&T's billing for termination of all calls transmitted through SBC's switch to AT&T, and then obtain reimbursement or compensation from the actual originating carrier, than to take whatever other steps are necessary for SBC to provide originating carrier OCN information to AT&T so that AT&T can bill the originating carrier directly.

[55]SBC states that if it fails to provide AT&T with originating carrier OCN information, AT&T should simply ask for the OCN information. (SBC Init. Br., p. 277) Of course AT&T would expect to do that. Further, if AT&T were to bill SBC for terminating a call that had actually been originated by another carrier, but for which SBC had failed give AT&T the originating OCN information, SBC could simply provide the originating OCN information (late) so that AT&T can bill the actual originating carrier directly.

X. OSS ISSUE (ICA ARTICLE 33)

OSS Issue 2:[56] **Should AT&T be required to specify features or functionalities on UNE-P migration orders or should AT&T be able to indicate "as is" on UNE-P migration orders through a standard indicator on the orders.**

AT&T demonstrated in its Initial Brief (pp. 304-309) that its proposed contract language for Section 33.5.14 of the ICA should be adopted, thereby requiring SBC to provide "as is" ordering functionality (Ordering and Billing Forum ("OBF") Activity Type "W" ordering) for UNE-P migrations. AT&T's Initial Brief anticipated and addressed the arguments made in the initial briefs of SBC (pp. 279-285) and Staff (pp. 104-105), which are unavailing. Without repeating that section of its Initial Brief, AT&T notes a few points in response to the other parties.

First, SBC claims that the Commission has twice determined that SBC is not required to offer "as is" ordering, in Docket 01-0614 and Docket 01-0662. (SBC Init. Br., pp. 280-81) However, there is no indication that this issue was raised in Docket 01-0614. As to Docket 01-0662 (the Section 271 investigation), AT&T discussed that decision in its Initial Brief (pp. 307-08), where we showed that all the Commission determined there was that the Section 271 investigation was not an appropriate docket in which to raise the issue.

Second, SBC argues that it developed the "as specified" ordering process as a result of industry collaboratives involving numerous CLECs, and that AT&T did not contest the development of the "as specified" ordering process. (SBC Init. Br., pp. 281-82) However, AT&T is not objecting to the existence of the "as specified" ordering process. AT&T is objecting to the absence of, and requesting restoration of, the "as is" ordering process for UNE-P migrations that was provided by SBC until October 2002. Any implication in SBC's argument

[56] OSS Issue 1 was settled.

that the provision of "as specified" and "as is" ordering are mutually exclusive is belied by the fact that SBC provided **both** forms of ordering until October 2002. (See AT&T Init. Br., p. 305) Moreover, SBC fails to acknowledge that AT&T **did** request in an industry forum (the Change Management Process) that "as is" migrations be provided, but SBC rejected this request and stated that the request for "as is" ordering would not be considered in the CMP. (Tr. 268)

Third, SBC asserts that having to use "as specified" ordering, even where the customer wants to retain all existing features and functionalities in migrating to AT&T, is only a "minor inconvenience" to AT&T. (SBC Init. Br., p. 282) To the contrary, AT&T has shown that being forced to use "as specified" ordering in these circumstances creates additional work for AT&T, creates additional delays and frustration for the customer, and is much more susceptible to error at several points in the ordering and provisioning processes. (See summary of evidence at pages 305-306 of AT&T's Initial Brief.) SBC also asserts that the "minor inconvenience" to AT&T of not having "as is" ordering does not outweigh the cost of reinstating "as is" ordering (SBC Init. Br., p. 282), but SBC has provided no cost estimate. Additionally, SBC argues that reinstating "as is" ordering would be disruptive to other CLECs and that there is no indication other CLECs want "as is" ordering to be available, and implies that the desire for "as is" ordering is just a matter of preference for AT&T. (Id., pp. 282-83) AT&T notes in this regard that what it is requesting is the availability of the industry standard OBF Activity Type "W" ordering. The fact that there is an established OBF activity type for "as is" ordering indicates that the activity type has been developed through a process involving broad industry participation. AT&T submits that industry participants would not have devoted their limited resources to developing guidelines for OBF Activity Type "W" if this form of ordering were not in demand.

Finally, SBC argues that it is the better business practice for AT&T (and other CLECs) to use "as specified" ordering, in which the ordering party is required to expressly specify all UNEs and features being ordered. (SBC Init. Br., pp. 283-84) AT&T respectfully submits that it is not for SBC to be determining what its competitors' business practices should be. In any event, as already discussed above, AT&T has demonstrated in this case the cost, inconvenience and potential customer loss it experiences as a result of being required to use "as specified" ordering for all orders.

In summary, the Commission should adopt AT&T's proposed contract language for Section 33.5.14 of the ICA. However, as noted at pages 308-09 of AT&T's Initial Brief, AT&T is willing to remove the reference to Section 13-801 of the Public Utilities Act from its proposed language, since that reference appears to be troublesome to SBC.

XI. PRICING ISSUES (ICA PRICING SCHEDULE)

Pricing Issue 1: Should AT&T's rates for SBC's use of Space License apply on a per trunk group or per switch basis?

Staff agrees with AT&T that the pricing for AT&T's lease of space to SBC in AT&T network locations for SBC to use in terminating trunks (and more specifically, the application of the discounts in the pricing schedule), should be on a per-trunk group basis (Staff Init. Br., pp. 105-06), which is how this pricing is done under the AT&T-SBC interconnection agreements for the other four SBC Midwest states, and is consistent with AT&T's access tariff.[57] (See id. and AT&T Init. Br., pp. 311-12) SBC disagrees with AT&T and Staff. Most of the arguments in SBC's Initial Brief (pp. 286-290) were anticipated and addressed in AT&T's Initial Brief (pp. 310-313), and AT&T's arguments will not be repeated here.

SBC does cite an example given by SBC witness Mindell (who presented no direct testimony on this issue) concerning the capabilities of a Lucent 5ESS switch. (SBC Init. Br., p. 288; see AT&T Ex. 6.1, p. 21)) The cited example consists of two sentences in Mr. Mindell's rebuttal testimony, and provides absolutely no information as to how widespread the use is of this particular switch.[58] SBC also claims that by determining the pricing of Space License based on the number of trunk groups terminated, "AT&T's proposal deprives SBC Illinois of the

[57]SBC persists in its incredible argument that AT&T "outwitted" it in not just one, but all four other SBC Midwest states by slipping language "into the fine print" that SBC missed. (SBC Init. Br., p. 290) Even if SBC missed this language in the "fine print", the resulting interconnection agreements had to be approved by the four state commissions as non-discriminatory to other carriers and not inconsistent with the public interest, convenience and necessity. (47 U.S.C. §252(e)(2)(A).)

[58]Apparently recognizing that its witness presented no information as to how widespread use of this particular switch is (undoubtedly for good reason), SBC states that the Lucent switch was "manufactured by AT&T's former manufacturing arm" (SBC Init. Br., p. 288), in an attempt, we presume, to imply that the switch is in widespread use. Such efforts serve only to demonstrate how weak SBC's arguments and position are on this issue.

discount promised in the price schedule." (SBC Init. Br., p. 287; see also p. 288) SBC does not disclose where this "promised" discount came from; it certainly did not come from the parties' interconnection agreements in the other four SBC Midwest states, which, as noted above, are applied in the manner proposed by AT&T in this case.

In any event, SBC's real concern seems to be that it will be unable to consistently obtain the maximum possible discount under the pricing schedule. (See, e.g., id., p. 288 (SBC can only get to the third highest tier of the pricing schedule when it uses the Lucent switch); SBC Ex. 6.1, p. 19 (SBC can "only rarely" qualify for the volume discounts.) However, AT&T reiterates that it would be inappropriate for the Commission to order the specific discounts that AT&T is offering on a per-trunk group basis to be applied on a per-DS1 basis. AT&T is offering discounts from the maximum rates based on the number of trunk groups terminated at each of its network locations, not on the basis of the total number of DS1's terminated at each location. Even assuming that SBC's claim is correct that the amount of space it uses, and AT&T's costs, are a function of the total number of DS1's terminated at a network location, this would not justify simply taking the discounts that AT&T is offering per trunk group and applying those same discounts to the total number of DS1's terminated – which is what SBC seeks to do. The Commission might conclude that charges for Space License ought to be applied on the basis of the total number of DS1's terminated at a network location, rather than on the basis of the number of trunk groups terminated; but it would then be necessary to determine an appropriate discount system to apply per DS1. Simply applying the discounts applicable on a per-trunk group basis to the number of DS1's per location would be arbitrary and incorrect.

Accordingly, the Commission should adopt AT&T's position and language, which is supported by Staff, for Pricing Issue 1.

Pricing Issue 4:[59] **What is the proper rate for reciprocal compensation associated with ULS-ST?**

AT&T and SBC Illinois agree that this issue is identical to Intercarrier Compensation Issue 1 and should be resolved consistently with that issue. AT&T refers to the section of its Initial Brief on Intercarrier Compensation Issue 1. (AT&T Init. Br., pp. 207-213) For the reasons set forth there in detail, the reciprocal compensation associated with ULS-ST traffic should be charged at $0.001100 per minute of use ("MOU") as set forth in SBC Illinois' tariff Ill. C. C. No. 20, Part 19, Section 21, Sheet 45, prior to the latest revision issued August 27, 2002. Accordingly, the Commission should adopt the ULS-ST compensation rate of $0.001100 per MOU shown on Line 485 of the Pricing Schedule, as proposed by AT&T, rather than the rate of $0.003746 per MOU shown on Line 761 of the Pricing Schedule, as proposed by SBC.

Pricing Issue 5:

Issue 5(a): How should LIDB queries be defined in the Pricing Schedule?

Issue 5(b): Should prices for unbundled operator services – LIDB validations be included in the Pricing Schedule?

Staff essentially agrees with AT&T on this issue by stating that SBC's currently effective tariff for LIDB services should be incorporated by reference into the ICA pricing schedule. This would mean that SBC's current tariff would apply, but if and when the Commission approves (or approves as modified) the revised LIDB services tariff that SBC has recently filed with the Commission, the new tariff provisions would be incorporated into the pricing schedule. (Staff Init. Br., pp. 106-107) SBC argues that its current LIDB services tariff is incorrect and should not be perpetuated in the new ICA. (SBC Init. Br., p. 293) Regardless, it is still the currently-effective tariff. However, under Staff's recommendation, the current tariff will not be

[59]Pricing Issues 2 and 3 are settled.

"perpetuated" in the ICA, as it will be superceded for purposes of the ICA pricing schedule by SBC's new LIDB services tariff once the latter is approved by the Commission.

XII. CONCLUSION

For the reasons set forth in its Initial Brief and in this Reply Brief, AT&T Communications of Illinois, Inc., TCG Illinois and TCG Chicago respectfully request that the Commission decide the unresolved issues in this arbitration in accordance with AT&T's arguments and recommendations set forth herein, and adopt the contract language proposed by AT&T for each issue.

Dated: July 1, 2003

Respectfully submitted,

AT&T COMMUNICATIONS
OF ILLINOIS, INC., TCG ILLINOIS and
TCG CHICAGO

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ATTACHMENT 1 TO REPLY BRIEF OF
AT&T COMMUNICATIONS OF ILLINOIS, INC.,
TCG ILLINOIS AND TCG CHICAGO
ILL. C. C. DOCKET 03-0239

>From: Friedman, Dennis G. [mailto:DFriedman@mayerbrownrowe.com]
> >Sent: Friday, May 16, 2003 10:46 AM
> >To: denicke@michigan.gov
> >Cc: mswalli@michigan.gov; rpancon@michigan.gov; James_Denniston; JOSEPH
> >TOCCO (Legal) (E-mail)
> >Subject: Case No. U-13758 (SBC Michigan/MCIm)
> >
> > Dear Judge Nickerson:
> > I am now writing to request a short extension for the parties'
> > submission of PDAPs, which is currently scheduled for next Tuesday, May
>20.
> >
> > We are working very diligently to complete SBC Michigan's PDAP,
> > but will have great difficulty completing the task, which of course is a
> > very substantial one, by the assigned date. I am heavily involved
> > in a multi-issue arbitration between SBC Illinois and AT&T in which
> > testimony must be filed on May 20, and that date unfortunately cannot be
> > changed. Preparations for the massive May 20 filing in Illinois require
> > not only my time, but also the time of many of the same
> > witnesses who submitted testimony on behalf of SBC Michigan in this
> > proceeding and whose attention is also required for the PDAP in this
> > case. In addition, Joe Tocco, SBC Michigan's other principal
> > lawyer on this docket, also has other pressing Commission matters
> > competing for this time. In order for us to provide a PDAP of
> > the quality that will be most useful to the Panel, we would very
> > much appreciate an extension of one week, to May 27 or, if the Panel's
> > schedule precludes that, a three- day extension, to May 23.
> >
> > I will add that as we work on the PDAP and dig ever deeper into
> > the issues, we find issues that are susceptible to settlement. In fact,
> > I am authorized to report on behalf of SBC Michigan (and to inform
> > counsel for MCIm by copy of this note) that Issues 106 and 107 are now
> > resolved. On both of these issues, SBC Michigan accepts MCIm's
> > language. I believe that a by-product of the short extension we are
> > requesting -- which will allow us to continue to work on disposing of
> > issues while we write about them -- is likely to be the settlement
> > of additional issues. Finally, the requested extension would not
> > prejudice MCIm or, I believe, the Commission's ability to render a
> > timely arbitration decision.
> >
> > Thank you for your consideration.
> >
> >Dennis G. Friedman
> >
> >